(28,882)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 368.

SOUTHERN RAILWAY COMPANY, APPELLANT,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

INDEX.

	Original.	Print.
Proceedings in the district court of the United States for the western district of North Carolina	1	1
Caption	1	1
Bill of complaint	2	2
Exhibit A—Valuation report	41	22
Exhibit B—Counties of North Carolina served by Southern Railway	42	24
Application for interlocutory injunction	43	25
Order on application	46	27
Notice of hearing on application	48	28
Subpœna	51	29
Amendment to bill of complaint	52	29
Order making N. A. Collins, tax collector, party defendant	53	30
Motion to dismiss bill	54	30
Order overruling motion to dismiss	55	31
Amendment to bill and order making W. L. Murray party	56	32
Order allowing motion for leave to amend	57	33

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 16, 1922.

	Original.	Print.
Answer	59	35
Exhibit A—Statement of taxable values by counties	89	56
Consent decree	95	63
Affidavit of Murray R. Hubbard	98	65
A. H. Plant	115	74
J. B. Duke	128	79
C. E. A. McCarthy	138	84
T. H. Gatlin	140	85
R. E. Johnson	144	88
W. C. Idol	145	89
V. A. J. Idol	146	89
Frank Wineskie	148	90
Guy E. Wells	149	91
J. E. Kirkman	150	91
Harry Raymond	151	92
W. H. Slave	153	92
R. T. Amos	154	93
Wallace B. Davis	155	94
S. M. Hanes	156	94
R. H. Edwards	157	95
Geo. D. Bizzell	158	95
Fred R. Mintz	159	95
Members of tax commission	160	96
Motion to amend bill and order denying same	167	101
Amendment to bill	168	102
Affidavit of B. M. Rogers	172	105
Exhibit A.—Statement of assessments in Alamance County	173	106
Affidavit of C. J. O'Brien	175	110
Murray R. Hubbard	179	113
A. H. Plant	183	117
L. H. Skinner	187	119
Exhibit A—Memorandum of prices, May, 1920 and 1921	189	120
Per curiam opinion	191	121
Decree	196	125
Petition for appeal	198	126
Assignments of error	200	127
Motion of Southern Railway for stay	206	130
Order continuing petition for appeal and stay	207	131
Order allowing appeal and fixing bond	208	131
Bond on appeal	210	132
Citation and service	212	133
Stipulation as to transcript	213	134
Order denying stay and granting 30 days in which to make application to Supreme Court	215	135
Order to transmit record	216	136
Clerk's certificate	216	137

1 UNITED STATES OF AMERICA,
Western District of North Carolina:

At a District Court of the United States of America for the Western District of North Carolina Begun, Opened, and Held on the 18th Day of March, A. D. 1922.

Present: Hon. Edmund Waddill, Jr., Circuit Judge and Hon. H. G. Connor and Hon. Jas. E. Boyd, District Judges, when and where the following proceedings were had, to-wit:

In Equity.

261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as oCmmissioner of Revenue, et als.

1½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Bill of Complaint.

S. R. Prince,
Solicitor for Plaintiff.
L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
Of Counsel.

Endorsed: Filed in this office Sept. 22, 1921. R. L. Blaylock, Clerk.

2 *Bill of Complaint.*

Filed: Sept. 21, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

To the Honorable the Judge of the District Court of the United States in and for the Western District of North Carolina:

The Southern Railway Company, a corporation chartered and existing under and by virtue of the laws of the State of Virginia, and a resident of said State, brings this, its bill of complaint, against A. D. Watts, individually and as Commissioner of Revenue of the State of North Carolina, and a citizen of North Carolina, with his residence at Statesville, in the County of Iredell, State of North Carolina, in this Judicial District of the United States; Baxter Durham, Auditor of the State of North Carolina, Benjamin R. Lacy, Treasurer of the State of North Carolina, and James S. Manning, Attorney General of the State of North Carolina, citizens of the State of North Carolina;

3 C. D. Story, Sheriff of Alamance County, North Carolina;
W. H. Carson, Sheriff of Alexander County, North Carolina;
John A. Lyerley, Sheriff of Buncombe County, North Carolina;
Dan A. Johnson, Sheriff of Burke County, North Carolina;
W. P. Odom, Sheriff of Cherokee County, North Carolina;
J. H. Gunn, Sheriff of Caswell County, North Carolina;
C. L. Spears, Sheriff of Cabarrus County, North Carolina;
John W. Mauser, Sheriff of Catawba County, North Carolina;
H. A. Logan, Sheriff of Cleveland County, North Carolina;
G. F. Winecoff, Sheriff of Davie County, North Carolina;
Fred C. Sink, Sheriff of Davidson County, North Carolina;
George W. Frynt, Sheriff of Forsyth County, North Carolina;
David B. Stafford, Sheriff of Guilford County, North Carolina;
J. W. Carroll, Sheriff of Gaston County, North Carolina;
J. F. Cabe, Sheriff of Haywood County, North Carolina;
V. E. Grant, Sheriff of Henderson County, North Carolina;

4 M. P. Alexander, Sheriff of Iredell County, North Carolina;
E. L. Wilson, Sheriff of Jackson County, North Carolina;

Alex. Moore, Sheriff of Macon County, North Carolina;
W. O. Cochrane, Sheriff of Mecklenburg County, North Carolina;
J. J. Baley, Sheriff of Madison County, North Carolina;
J. L. Nichols, Sheriff of McDowell County, North Carolina;
L. Bun Lloyd, Sheriff of Orange County, North Carolina;
Frank Jackson, Sheriff of Polk County, North Carolina;
J. A. Brady, Sheriff of Randolph County, North Carolina;
J. W. Beason, Sheriff of Rutherford County, North Carolina;
A. P. Sands, Sheriff of Rockingham County, North Carolina;
J. H. Krider, Sheriff of Rowan County, North Carolina;
W. M. De Hurt, Sheriff of Swain County, North Carolina;
W. L. Alberty, Sheriff of Surry County, North Carolina;
Della Grimshawe, Sheriff of Transylvania County, North Carolina;
W. D. Woodruff, Sheriff of Wilkes County, North Carolina;
citizens of the State of North Carolina and inhabitants of the Western United States Judicial District thereof; and
J. W. Cooper, Sheriff of Bertie County, North Carolina;
John F. Harward, Sheriff of Durham County, North Carolina;
Jesse W. Thomas, Sheriff of Edgecombe County, North Carolina;
C. M. Lawrence, Sheriff of Gates County, North Carolina;
E. D. Hunt, Sheriff of Granville County, North Carolina;
J. A. House, Sheriff of Halifax County, North Carolina;
B. Scull, Sheriff of Hertford County, North Carolina;
W. J. Massey, Sheriff of Johnston County, North Carolina;
J. L. Cornwell, Sheriff of Nash County, North Carolina;
J. M. O'Briant, Sheriff of Person County, North Carolina;
J. S. Royster, Sheriff of Vance County, North Carolina;
D. Bryant Harrison, Sheriff of Wake County, North Carolina;
W. D. Grant, Sheriff of Wayne County, North Carolina;
B. E. Howard, Sheriff of Wilson County, North Carolina;
citizens of the State of North Carolina; and
the following citizens of North Carolina, who hold the office of Tax Collector of the city or town of North Carolina set opposite their respective names and each of whom is sued as such Tax Collector:

George Stillman, Andrews;
C. H. Bartlett, Asheville;
J. C. Calhoun, Bryson City;
M. L. Rhyne, Bessemer City;
R. H. Minges, Belmont;
J. D. Eckles, Black Mountain;
G. E. Lathrop, Brevard;
W. P. Williamson, Burlington;
J. C. Rickards, Canton;
W. H. Jarrett, Clyde;
C. M. Creswell, Charlotte;
Oren Kaylor, Conover;
N. H. Huffman, Claremont;
W. L. Sherrell, Catawba;
J. S. Gaither, Cleveland;

W. H. Parker, Carrboro;
R. F. Mills, Concord;
J. B. Readling, Cornelius;
F. A. Brawley, China Grove;
J. E. Lowe, Cary;
B. A. Smith, Clayton;
W. H. Burns, Drexel;
J. R. Patton, Durham;
J. C. Sutton, Dillsboro;
J. A. Johnston, Davidson;
G. E. Lovell, East Kings Mountain;
W. C. Lewis, Elkin;
H. W. May, Elon College;
A. C. Keeter, Forest City;
7 V. G. Grier, Gastonia;
S. B. Brinkley, Glen Alpine;
C. H. Sheppard, Grover;
D. M. Morris, Greensboro;
B. G. Hempley, Glenwood;
C. C. Sheppard, Gibsonville;
Mary Estlow, Graham;
James Rand, Garner;
J. S. Warrick, Goldsboro;
E. M. Rollins, Hot Springs;
R. G. Henry, Hickory;
Julius Harris, Highland;
S. B. Burwell, Henderson;
G. W. Brooks, Hendersonville;
J. B. Hoyle, Hazelwood;
J. G. White, Huntersville;
J. C. Hampton, Hampton;
W. L. Smith, High Point;
T. E. Lloyd, Hillsboro;
W. F. McCulloch, Kernersville;
G. E. Lovell, Kings Mountain;
H. C. Cabiness, Lattimore;
H. S. Adams, Lowell;
M. A. Abee, Long View;
Earl H. Holmes, Lexington;
H. H. Tate, Marion;
T. B. Harris, Mooresboro;
M. Alice Fowler, Mebane;
E. M. Ellis, Morrisville;
G. M. Kipka, Mooresville;
B. I. Smith, Mocksville;
Roy L. Gudger, Marshall;
8 W. J. Hallyburton, Morganton;
J. Luther Hyde, Marble;
Devereaux Birchfield, Murphy;
S. L. Pardue, North Wilkesboro;
R. O. Wilson, Nebo;

David Gaither, Newton;
L. J. Stirewalt, Old Fort;
R. B. Hines, Oxford;
B. L. Strickland, Pine Level;
W. F. Jones, Princeton;
W. M. James, Pineville;
W. I. Tweed, Rosman;
Ed Hugh Lee, Raleigh;
A. P. Hill, Rutherfordton;
E. B. Ware, Reidsville;
B. O. Hamrick, Shelby;
W. C. Robertson, Saluda;
D. W. Julian, Salisbury;
O. T. Mangum, Stem;
J. H. Griffin, Selma;
C. T. Hester, Stovall;
G. W. Long, Statesville;
V. C. Taylor, Sylva;
J. B. Livingston, Tryon;
W. S. Harwell, Troutman;
J. A. Morris, Thomasville;
J. B. Childers, Taylorsville;
E. F. Johnson, Union Mills;
O. C. Grill, Valdese;
W. A. Coble, Waynesville;
Geo. Triplett, West Hickory;
R. R. Kinney, Winston-Salem;
9 J. U. Gibbs, Whittier;
J. E. Coulter, Mayor and Tax Collector, Connelly Springs;
Fred Sechler, Mayor and Tax Collector, Landis;
C. B. Austin, Mayor and Tax Collector, Milton; and the following citizens of North Carolina, who hold the office of Tax Collector of the Special or Graded School District set opposite their respective names and each of whom is sued as such Tax Collector:
W. H. Burns, Drexel Graded School District;
D. A. Johnson, Glen Alpine Graded School District;
D. A. Johnson, Hickory Flat Special School District, No. 4;
D. A. Johnson, Hildebran Graded School District;
E. M. Hairfield, Morganton Graded School District;
D. A. Johnson, Rutherford College Special School District;
D. A. Johnson, Valdese Special School District No. 4;
Ralph Arndt, Claremont Special School District No. 11;
O. W. Kaylor, Conover Special School District No. 10;
D. B. Gaither, Newton Graded School District;
Carl G. Carpenter, Bessemer City Graded School District;
J. A. B. Goodman, Mooresville Graded School District;
A. Chatham, Jr., Elkin Graded School District.

10 1. Plaintiff respectfully represents and shows that it is a corporation of the State of Virginia engaged in the business of a common carrier of freight and passengers, qualified to engage

in said business in the State of North Carolina, and authorized by its Virginia charter and under the laws of North Carolina to lease, use, operate, and acquire other railroads, under which authority it has leased and acquired other railroads in the State of North Carolina. The lines of railroad which it operates run into and through forty-six counties of the State of North Carolina, including Iredell County, with a mileage of 1,093 miles. Plaintiff operates, and during the year 1920 operated as a common carrier of passengers and freight, a system of railroad extending into and through the States of Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Indiana and Illinois, and the District of Columbia, with a total mileage of 6,971 miles. The name, citizenship, and residence of the defendants to this action is as above set forth.

2. The amount involved in this suit, exclusive of interest and costs, is in excess of three thousand dollars ($3,000.00).

3. Plaintiff shows that the tax sections of the Constitution of North Carolina and the plan of taxation now in force in the State of North Carolina. as applicable to this plaintiff and other railroads in the State, are as follows:

(*a*) Section 3 of Article 5 of the Constitution of North Carolina provides in part as follows:

11 "Sec. 3. Taxation shall be by uniform rule and ad valorem; exemptions. Laws shall be passed taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise; and, also, all real and personal property according to its true value in money * * *. The General Assembly may also tax trades, professions, franchises, and income," etc.

Section 6 provides:

"Sec. 6. Taxes levied for counties. The total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by article nine, section three, of the constitution: Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property."

Section 9 of Article 7 provides:

"Sec. 9. Taxes to be ad valorem. All taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same, except property exempted by this constitution."

(*b*) Prior to the first day of May, 1921, the Commissioners, selected from time to time under authority of law to establish the North Carolina State Tax Commission, constituted a Board
12 of Appraisers and Assessors for railroad companies and other companies exercising the right of eminent domain.

(*c*) Under an Act of the Legislature of North Carolina, ratified March 8, 1921, Public Laws of North Carolina, Session 1921, page 288, the powers and duties of the State Tax Commission were transferred to and imposed upon the Commissioner of Revenue.

(*d*) Under Sections 62, 62(*a*), and 63 of the Act of the Legislature of North Caroina, approved March 8, 1921, page 225 of the Public Laws of North Carolina, Session 1921, at page 263 (hereinafter referred to as the Machinery Act), it is provided that railroad companies file certain returns.

(*e*) Under Section 64 of said Machinery Act, it was made the duty of the Commissioner of Revenue at such dates as real estate is required to be assessed for taxation, to first determine the value of the tangible property of each division or branch of such railroad, of rolling stock, and all other physical or tangible property.

Section 64 then provides:

"This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property."

13 Section 64 also provides:

"They (referring to the State Tax Commission, for which was thereafter substituted the Commissioner of Revenue as set forth above) shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property."

Section 64 also provides:

"The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the property for the purpose of an ad valorem taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof; and the State Tax Commission shall certify, on or before the first day of September, to the chairman of the county commissioners and the mayor of each city or incorporated town the amount apportioned to his county, city, or town;"

(*f*) Section 65 of the Machinery Act provided for a proportional valuation of interstate railroads in the proportion which the
14 length of the main line of road in the State of North Carolina bears to the whole length of such main line of road, and to determine the value in the State of North Carolina accordingly. Said section contained the following proviso:

"Provided, the commission shall, in valuing the fixed property in this State, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this State, and any other factor which would give a greater or less value per mile of road in this State than the average value for the entire system. On or after the first Monday in July the said commission shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said commission may, if they see fit, require all argument and communications to be presented in writing."

(*g*) Section 82 (6½) of an act entitled, "An Act to Raise Revenue," approved March 8, 1921, page 147, of the Public Laws of North Carolina, Session 1921, at page 193, provides as follows:

"Railroads. Every railroad company doing business in this State shall annually on or before the thirtieth day of July make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such informaton as the State Tax Commission shall
15 require, for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall be one-tenth of one per cent (0.1%) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city, or town shall be allowed to collect any taxes under this section."

(*h*) The State of North Carolina levies also an income tax as provided in the Income Tax Act of 1921, which levies upon
16 the net income for the calendar year 1921 taxes as set forth in said act, page 203, of the Public Laws of North Carolina, Session 1921, amounting to three per cent (3%) on the net income of this corporation.

4. For the year 1919 the ad valorem assessment of the properties of plaintiff in the State of North Carolina was forty-six million, eight hundred sixty-nine thousand, nine hundred and forty-two dollars ($46,869,942.00). In 1920 the State Tax Commission, under the Revaluation Act (Chapter 84, Public Laws of North Carolina, 1919) increased the assessment of said property for 1920 to ninety-six million, six hundred five thousand, six hundred and ninety-four dollars ($96,605,694.00), and plaintiff paid its taxes thereon under written protest. In 1921 the Revenue Commissioner assessed said properties for ad valorem taxes at ninety-six million, three hundred six thousand, three hundred and fifty-seven dollars ($96,306,357.00), being the same as 1920, except for minor changes in local property lying off the right of way. A hearing was had before the Revenue Commissioner and facts adduced showing that said valuation was in excess of the true "actual value" of the property as the said term is defined in Section 28 (*e*) of the Machinery Act, reading in part as follows:

"The words 'actual value,' as used in the several subdivisions of this section, shall be held to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and
17 deemed to mean what the property would bring at cash sale when sold in such manner as such properties are usually sold."

This hearing resulted in the Revenue Commissioner adhering to the assessment of plaintiff's property at ninety-six million, three hundred six thousand, three hundred and fifty-seven dollars ($96,306,357.00). The plaintiff petitioned the Commissioner of Revenue for a review of the assessment of its property by the State Board of Equalization. The Revenue Commissioner, under advice of the Attorney General, held that the plaintiff and other railroads had no appeal to the State Board of Equalization or any other body, but he reheard the matter himself and declined to change said assessment.

5. Plaintiff shows that the assessment of its properties for 1921 as above set forth is in excess of the "true value" in money of said properties for tax purposes as the same is defined in Section 28 (*e*) of the Machinery Act. Neither the State Tax Commission nor the Revenue Commissioner advised plaintiff at what sum the tangible property of plaintiff was assessed, as it provided in Section 64 of the Machinery Act. Neither the State Tax Commission nor the Revenue Commissioner advised plaintff at what sum it or he assessed

the value of the franchise of plaintiff. Plaintiff was advised that the aggregate value of the physical or tangible property and the franchise for 1921 was ninety-six million, three hundred six
18 thousand, three hundred and fifty-seven dollars ($96,306,-357.00) for the purposes of ad valorem taxation. Plaintiff, in 1920, was advised by the Tax Commission that it found an average net income (deducting operating expenses and taxes within North Carolina from operating revenue within North Carolina) of plaintiff's lines, including certain independently operated lines, 1915-1919, to be an average for the five years of six million, one hundred seventeen thousand, six hundred and twenty-five dollars ($6,117,625.00). This sum capitalized at six per cent (6%) produced one hundred one million, nine hundred sixty thousand, four hundred and thirteen dollars ($101,960,413.00), of which amount so found the State Tax Commission for 1920 apportioned ninety-six million, six hundred five thousand, six hundred and ninety-four dollars ($96,605,694.00) to the plaintiff and the remainder to certain independently operated lines. The Revenue Commissioner, in fixing the assessment for 1921, assessed plaintiff at ninety-six million, six hundred five' thousand, six hundred and ninety-four dollars ($96,605,694.00), subject to reductions of outlying real estate, which brought the assessment to the figure at which it now remains of ninety-six million, three hundred six thousand, three hundred and fifty-seven dollars ($96,306,357). It is therefore stated that if the Commissioner used any method, that employed was the same as that for 1920 stated above.

Plaintiff avers that the method used was illegal and resulted in the overassessment of plaintiff's property for the following reasons:

(*a*) In arriving at the assessment for 1920, the State Tax
19 Commission determined, and the Revenue Commissioner pursued, the same plan for 1921, that the plaintiff's annual average net income within North Carolina for the five year period 1915-1919 was $6,117,625.00, which sum was obtained by deducting from revenues allocated to North Carolina the average annual taxes paid in said State and the average annual operating expenses allocated to that State. Plaintiff avers that, as was explained to the Revenue Commissioner, the determination of net income for the State of North Carolina cannot be arrived at justly and fairly by such a method, because allocation of operating expenses to any branch, or division of a railroad, or to any State, is made arbitrarily and not with mathematical accuracy. Plaintiff avers that allocation of operating expenses to branches or sub-divisions of its system is made regularly, but only for comparative purposes, and is recognized to be not only mathematically incorrect but does not truly represent the said expenses; and, further, that such allocation is made in its report to States because of State laws and regulations requiring it. Plaintiff avers that under the existing accounting methods of allocating expenses to North Carolina, operating expenses so allocated are understated and net income overstated in this: That only

expenses accruing within that State are charged to State expenses, while traffic passing through that State is assembled or originates at and is destined to terminal points without North Carolina at which large operating expenses accrue no part of which expense is apportioned to that State, while the mileage revenue therefrom
20 is apportioned to North Carolina. For illustration, a trainload of peaches originates in Georgia, destined to New York, ther *is* first the assembling charges, then there *is* the terminal expenses of the Atlanta, Ga., yards, and finally the terminal expenses at Potomac Yards, Va., no part of which is charged in North Carolina expenses, while North Carolina revenue is credited with a full mileage proportion of the entire revenue.

This method which was employed by the Revenue Commissioner works to the disadvantage of plaintiff for the purpose of ascertaining the net income in North Carolina in this: (*a*) the traffic which moves through the State of North Carolina greatly exceeds the traffic originating in or destined to North Carolina, and, therefore, North Carolina escapes any terminal expenses on a large volume of the total traffic; and (*b*) the terminal expenses on traffic originating or destined to North Carolina are very much less than those without the State at points like Atlanta, Birmingham, Pinners Point, Brunswick, Memphis, St. Louis, Potomac Yards, etc. That under such plan so employed the result is a showing that the ratio of operating expenses to operating revenues in North Carolina is less than that of the entire system, which plaintiff avers is not true. Plaintiff states that operating revenues and operating expenses for the entire system are kept with mathematical accuracy; that its accounting thereof is done under rules prescribed by the Interstate Commerce Commission, and is checked by that body and also by certified public account-
21 ants. And plaintiff further avers that if the value of its property is to be determined by a capitalization of its net income, the capitalization of its net income for the entire system should be used in order to determine the value of its entire property, which should then be apportioned to North Carolina, or any other State, upon any fair and reasonable method. Plaintiff avers that a statement of its system operating results for the last five year period, which has been filed with the North Carolina Commissioner of Revenue, is as follows:

Year to Dec. 31.	Gross op. revenues.	Op. expenses and taxes.	Net operating income.
1920	$151,864,389.45	$136,538,588.22	$15,325,801.23
1919	129,787,811.61	118,932,543.03	10,855,268.58
1918	126,574,296.85	96,214,582.21	30,359,714.64
1917	90,716,568.96	64,286,607.25	26,429,961.71
1916	75,554,651.59	52,155,258.29	23,399,393.30
Total five years	$574,497,718.46	$468,127,579.00	$106,370,139.46
Average	$114,899,543.69	$93,625,514.80	$21,274,027.89

Plaintiff avers that the proper figure to capitalize, if that method is to be used, was twenty-one million, two hundred seventy-four thou-

sand, and twenty-seven dollars and eighty-nine cents ($21,274,027.89), and capitalizing that figure, the showing, as compared with the 1921 assessment, is as follows:

Rate.	Capitalized system values.	To North Carolina. On road mileage basis.	To North Carolina. On gross earnings basis.	1921 assessment of com. of rev.
6%	$354,567,132.00	$71,267,994.00	$78,004,769.00	$96,306,357.00
7%	303,914,684.00	61,086,851.00	66,861,230.00	
8%	265,925,349.00	53,460,995.00	58,503,577.00	

22 The result is further that the assessment of the Revenue Commissioner, arrived at as above pointed out, amounts to a tax upon property beyond the jurisdiction of the State and is a burden on commerce among the States and violates the Commerce Clause of the Constitution of the United States.

(*b*) The percentage used by the Revenue Commissioner in capitalizing was six per cent (6%). That figure is not at this time a proper figure because the lowest rate generally sought and obtained upon capital invested in business generally in the State of North Carolina is at this time not less than eight per cent (8%). At the time said assessment was made this company and railroad companies generally, which enjoyed the highest credit, were paying not less than seven and one-half per cent (7½%) for money and, as a rule, money yielded as much as eight per cent (8%). No railroad securities bearing six per cent (6%) were worth par on the market. Therefore, the rate at which the average net income should have been capitalized was not less than eight per cent (8%), and this rate does not allow, as the rate should, anything for the hazards of such an investment. Plaintiff's lines run into and through many other States, and, as evidence of the correctness of capitalization at not less than eight per cent (8%), it is averred that the taxing boards of the following States, have, for 1921, in arriving at the assessment on the capitalization basis, used the following rates of interest:

23 Georgia	8 %
Alabama	8 %
Mississippi	8 %
Louisiana	10 %
Tennessee	7 %
Kentucky	8½%
Ohio	8 %
Indiana	

As averred, the net income figure of six million, one hundred seventeen thousand, six hundred and twenty-five dollars ($6,117,625.00) for North Carolina used by the Revenue Commissioner was far in excess of the proper figure, but using that figure, if plaintiff's assessment had been arrived at by capitalizing at eight per cent (8%), the assessed value in North Carolina would have been, under the method employed by the Revenue Commissioner, seventy-six mil-

lion, four hundred seventy thousand, three hundred and twelve dollars ($76,470,312), as against the Revenue Commissioner's assessment of $96,306,357.00.

(c) Plaintiff shows that in arriving at the value the North Carolina law required to be considered the value placed upon the whole property by the public as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property. If the Revenue Commisisoner had used that basis, it is averred that, using the fair average market price available during the past year for the outstanding securities of Southern Railway Company for the owned and leased lines, the value is shown to be two hundred ninety-seven million, nine hundred nineteen thousand, one hundred dollars ($297,919,100.00). If we take the road mileage proportion
24 of this figure, as is directed by Section 64 to be used in apportioning the value between counties, and as is approved by Section 65 of the Machinery Act, it would allocate to the State of North Carolina a value of fifty-nine million, eight hundred eighty-one thousand, seven hundred and thirty-nine dollars ($59,881,739 00). If we allocate to North Carolina a proportion of the stock and bond value on the gross earnings basis, it would amount to sixty-five million, five hundred forty-two thousand, two hundred and two dollars ($65,542,202.00), as compared with the 1921 assessment of $96,306,357.00.

Plaintiff avers that under no one of these accepted tests, viz., capitalization of earnings, and the market value of the stocks and bonds, is the true value of its property as much as the assessment herein complained of.

6. Plaintiff shows that the Bureau of Valuation of Interstate Commerce Commission has found as a tentative value of the cost of reproduction new of its said properties in North Carolina, the sum of fifty-three million, three hundred twenty-six thousand, nine hundred and fifty-one dollars ($53,326,951.00), and has found as the reproduction cost, less depreciation, the sum of forty-four million, eight hundred twenty-seven thousand, six hundred and thirteen dollars ($44,827,613 00). The above figures, while tentative, are those found by the Bureau of Valuation of the Interstate Commerce Commission, as shown by Exhibit "A," hereto attached, and do not include the value of land or the value of rolling stock.
25 The total figures above set forth include, as will be seen from Exhibit "A," values for Atlantic & Yadkin Railway Company, High Point, Randleman, Asheboro & Southern Railroad Company, and Yadkin Railroad Company, separately operated companies, and since the $96,306,357.00 assessment complained of does not include the assessment of the three roads named, there should be deducted from the—

the following:		Reproduction cost new of—		Reproduction cost less depreciation of—
		$53,326,951.00		$44,827,613.00
A. & Y.....	$3,282,353.00		$2,693,272.00	
H. P. R. A. & S.	342,427.00		262,626.00	
Yadkin	643,072.00	4,267,852.00	508.877.00	3,464,775.00
Leaving for Southern Railway Company and Lines it Operates.		$49,059,099.00		$41,362,838.00

The Interstate Commerce Commission has also furnished to plaintiff a statement of the inventory cost of its rolling stock as of June 30, 1916, which, less depreciation as shown by the Commission, amounts to $51,076,984.00. Plaintiff has purchased since that time rolling stock of the cost of $16,294,158.00. Adding these two, we have as the total for rolling stock, $67,371,142.00. Dividing that on a mileage basis would give as the North Carolina proportion $13,541,600.00. This gives a total tentative figure made up as above stated of:

26	Reproduction cost, less depreciation.....	$41,362,838.00
	North Carolina proportion of rolling stock..	13,541,600.00
Estimated value of land.....		5,000,000.00
Total.....		$59,904,438.00

The above total of $59,904,438.00 is averred to be the limit of true value in North Carolina for ad valorem taxing purposes beyond which plaintiff's property should not in any event be assessed. As against this, the Commissioner of Revenue, plaintiff is advised, believes and hence states, assessed as the total value of plaintiff's tangible property the sum of $78,778,169.00 and to this he added as the intangible or franchise value the sum of $17,528,188.00, making a total assessment for ad valorem purposes of $96,306,357.00. The assessment of plaintiff's property now complained of is $36,401,919.00 in excess thereof, and the illegal tax which will be collected thereon if said assessment is allowed to stand will be approximately three hundred thousand dollars ($300,000.00).

Plaintiff does not concede that the valuation found by the Interstate Commerce Commission under the Interstate Commerce Act is the true value for tax purposes required by the Constitution and laws of North Carolina, but it is advised and states that wherever railroads have been able to show to the Commissioner of Revenue the tentative value as fixed by the Interstate Commerce Commission, the Commissioner of Revenue has recognized the same and the recognition thereof resulted in the reduction of the assessed value of said railroads many millions of dollars.

27 Plaintiff avers that its tax authorities did not have and did not present to the Commissioner of Revenue at the hearing the tentative values above set forth. It avers that said

facts as to value prove that the showing made to the Commissioner of Revenue of overassessment of its property was correct, and in order that discrimination may not result as between the several railroads in the State of North Carolina, no assessment should be made against plaintiff which does not recognize the said tentative value, and as a fact at this time the Uniformity Section of the Constitution of North Carolina, and the Fourteenth Amendment to the Constitution of the United States are violated by reason of the fact that the 1921 assessment of plaintiff is not controlled, modified, or measured by said tentative assessment as was the assessment of other railroads in North Carolina.

Plaintiff avers that the over assessment of its property in North Carolina is further shown in this: The per annum standard return allowed the Southern Railway Company under the Act of Congress known as the Federal Control Act, as just compensation to the Southern Railway Company for the possession, use, control, and operation of all of its properties by the Federal Government was $18,653,893.15. The State of North Carolina's mileage proportion of said standard return was $2,924,791.49. That figure, capitalized at six per cent, gives a value of $48,746,707.00, or $45,559,650.00 less than the assessment of the Revenue Commissioner herein complained of; if the above return proportioned to North Carolina be capitalized at eight per cent, the result is $36,559,757.00, as
28 compared with the complained of assessment of $96,306,-357.00.

7. Plaintiff shows that the assessment made against it in 1920 was accepted under protest and the tax paid under protest, and that it has never recognized or admitted the correctness of any such assessment.

8. Plaintiff shows that Section 28(*a*) of the Machinery Act reads as follows:

"The board of county commissioners and the county board of appraisers and review, heretofore appointed under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen (any vacancy which may have occurred to be filled by appointment of the board of county commissioners), shall meet jointly in each county on the first Tuesday after the first Monday in April, one thousand nine hundred and twenty-one, as a county board of review, to determine if the value of real property as heretofore appraised and assessed in the county as a whole is in excess of the fair value of such property at the time of meeting of such board. The chairman of the board of county commissioners shall be the chairman of the county board of review as thus constituted, and the clerk of the board of county commissioners shall be secretary of the said board. The said board shall make proper inquiry and investigation into the existing values of real property as compared with the assessed and appraised values thereof in the several cities, towns, and townships of

the county; and if it shall find that the assessed value of such
29 property is in excess of the actual value, it shall find the average percentage of such excess in the county as a whole, or in the several cities, towns, and townships, and shall report its finding so made to the State Tax Commission not later than the twentieth day of April, one thousand nine hundred and twenty-one. The values so reported shall be the values at which the property shall be assessed for taxation, unless and until the same have been changed and revised by the State Tax Commission and certified to the board of county commissioners of such county, which shall be done not later than the first day of July, one thousand nine hundred and twenty-one."

Acting under said Section 28(*a*), the respective County Boards of Review of the counties through which plaintiff operates shown on attached Exhibit "B," made a part hereof, made horizontal reductions in the percentage set opposite each in the assessed value in the said counties as a whole of real property assessed by said County Boards and upon report of their action to the State Board of Equalization, the assessments so horizontally reduced were not revised or changed by the State Board of Equalization and remain the value at which the property other than railroads is now assessed.

The assessment of 1920 was by legal presumption at true value, in fact it was in excess of true value. The assessment of other property was by like legal presumption at true value. The County Boards made a horizontal systematic reduction, the Commissioner of Revenue made no similar reduction on plaintiff's prop-
30 erty,—result discrimination and violation of the Constitution of North Carolina and of the Constitution of the United States.

Plaintiff avers that the Commissioner of Revenue, in fixing the assessment herein complained of, declined to consider or to give to plaintiff the benefit of any similar horizontal reduction in the right of way lands and structures thereon of plaintiff situated in said respective counties, or to make any reduction in its assessment, and that this declination on the part of the Commissioner of Revenue is a discrimination violative of Section 3 of Article 5 of the Constitution of North Carolina and violative of the Fourteenth Amendment to the Constitution of the United States, now especially pleaded and relied upon.

The result is that while other taxpayers generally will, due to decrease in assessment and increase in rate, pay no more, if as much, tax as last year, the plaintiff will, due to increase in rate, pay on the same assessment, it is estimated, an increased tax of approximately one hundred and eighty thousand dollars ($180,000).

9. Plaintiff is advised and, on information and belief, states that the tax rate either has been or will be materially increased in said counties in order that the amount of needed revenue may be raised. The result is that the assessment of plaintiff's property remains practically the same, whereas the assessment of other property is reduced. The causes which brought about a reduction in value of

real estate in the counties in which the reduction was made
31 apply with even greater force to plaintiff's property. The reduction in value has not been confined to real property of individuals, but applies alike to real estate of plaintiff and other railroads and to the property generally of plaintiff. Plaintiff avers that the reduction being horizontal, shows that it was not based upon any reduced value of any particular piece of real estate or upon facts individual to any individual taxpayer, but is due to general conditions applicable alike to all and should, therefore, be applied alike to all and plaintiff should derive the benefit thereof, and its failure to receive the benefit thereof is contrary to Section 3, Article 5, of the North Carolina Constitution and to the Fourteenth Amendment to the Constitution of the United States.

10. Plaintiff recognizes that values of other property in North Carolina are depressed and that there was doubtless just ground for a reduction in taxable values, but it shows that its values are largely dependent upon the values of other property in the State and its business fluctuates with the prosperity of the States it serves, including North Carolina, and it is common knowledge and a fact that plaintiff's property, like other railroad property, and the value of the use thereof, has been very greatly depressed in 1921 and, therefore, a commensurate reduction in its taxable values should have been made, and the failure to do so is discrimination and contrary to the uniformity clause of the Constitution of North Carolina and the Fourteenth Amendment of the Constitution *to* the United States.

32 Plaintiff states as proof of the depression in its business, and, resulting therefrom, depressed value of its property, that for the first six months of 1921 it lacked, after paying operating expenses, taxes, hire of equipment and rents for joint facilities, more than $4,500,000.00 of earning sufficient money to pay the interest on its bonded indebtedness.

11. Plaintiff avers that under the scheme of laws provided by the State of North Carolina, all taxpayers other than railroads and others assessed by the Revenue Commissioner have the right to appeal to and the duty of equalization is placed upon the State Board of Equalization consisting of three individuals. That prior to 1921 the railroad assessments were fixed by a board of three, known as the State Tax Commission, but under the law of 1921 the assessment is fixed by the Rvenue Commissioner and the law does not provide, as was the legislative intention under the heretofore recognized policy of the State, for any appeal from this assessment fixed by the one individual. This is a denial of the equal protection of the law and of the uniformity clause of the North Carolina Constitution.

12. Plaintiff further shows that the so-called Franchise Tax is not a franchise tax measured by the value of the use of the property, but is in truth and in fact an ad valorem tax based on the value of the property. This being true, and it being further true that said

so-called Franchise Tax is levied only upon corporations, the
33 result is that this ad valorem tax is not levied equally upon all property holders in the State and is, therefore, contrary to Section 3 of Article 5 of the Constitution of North Carolina, and by reason of the enforcement thereof plaintiff is deprived of the equal protection of the law contrary to the Fourteenth Amendment to the Consitution of the United States. This Franchise Tax is one-tenth of one per cent (0.1%) on the assessed value of the property for ad valorem purposes, and, therefore, the fixing by the Revenue Commissioner of a sum greatly in excess of the true value for ad valorem purposes is doubly iniquitous and damaging because that excessive assessment is also used as the basis for the illegal so-called Franchise Tax.

Plaintiff's property is assessed for ad valorem purposes at the sum of ninety-six million, three hundred six thousand, three hundred and fifty-seven dollars ($96,306,357.00), and on that sum it pays to each county the assessed rate of that county, just as other property holders do. In addition to that, it pays to the State, under the guise of a franchise tax, one-tenth of one per cent (0.1%) on that same ad valorem value.

Plaintiff further avers that this so-called Franchise Tax violates the uniformity section of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States in that as to all other corporations it is measured by the capital stock, whereas as to railroads it is based upon the ad valorem value for taxation.

Plaintiff avers that if the so-called Franchise Tax is con-
34 strued to be a tax for the privilege of doing business, it is unconstitutional and void as a tax upon the privilege of engaging in interstate commerce and violates the commerce clause of the Constitution of the United States.

13. Plaintiff further shows that the assessment of its property in excess of its true value results in erroneous importation of value into the State of North Carolina, and by as much as such erroneous value is imported into North Carolina and taxed, the tax amounts to a direct burden upon interstate commerce and contravenes the Constitution of the United States.

14. Plaintiff further shows that the system of pyramiding taxes, as is evidenced by the tax laws of the State of North Carolina set forth above, including the income tax of three per cent (3%) on the net income, is such a burden on this interstate carrier as to amount to a direct burden on interstate commerce contrary to the Constitution of the United States.

15. Plaintiff avers that said assessment was improperly made and is not according to law and is excessive, oppressive and illegal and there was not before the Commissioner of Revenue any competent evidence to sustain it.

16. Plaintiff shows that it will owe to the State, counties and municipalities the legally enacted tax upon whatever may be found

to be the legal assessment of its property for taxes in the State
35 of North Carolina, and inasmuch as it has no desire to embarrass the State, counties and municipalities in the collection of the revenue to which they may be entitled, it expresses a willingness, if any plan may be devised under which it may legally do so, to pay, at the time the same may come due according to law, the taxes based upon a certainly legal assessment of its property.

17. Plaintiff avers that notice of the herein complained of assessment, dated August 27th, was received by plaintiff August 29th, and while the preparation of this bill was in progress it was advised that said assessment had been on September 2, 1921, certified to the State Auditor and to the several counties and municipalities in the State of North Carolina in which plaintiff's lines are subject to tax. Plaintiff has, therefore, joined as parties defendant hereto the State Auditor and the State Treasurer, who, under the law, respectively charge for collection and receive payment of the franchise tax and the Sheriff of each county in which plaintiff has property, upon whom the law places the duty of collecting the county taxes levied upon said illegal assessment, and the City or Town Tax Collector of each incorporated city or town in which plaintiff has property, upon each of whom the law imposes the duty of collecting the city or town taxes on said illegal assessment, and unless said officers are joined in this suit, plaintiff will be required to institute a number of suits, all of which will involve the same and the one question of the validity of said assessment made by the Commis-
36 sioner of Revenue. The assessment is made as an entirety by the Revenue Commissioner and by him apportioned to the several counties and municipalities of the State. The Boards of County Commissioners and the Chairmen of the County Commissioners and the Mayor of each incorporated city and town do not make the assessment and are not empowered to change the same. They are required by law to assess against this railroad on the proportion of said invalid assessment so certified to it or him the tax imposed for county, township, city or other tax district purposes and levied on other property.

Unless the tax collecting officers of the several counties and municipalities are restrained, they will proceed under the law to collect the tax on the illegal assessment, which tax becomes due on the first Monday in October. Under the law of North Carolina, the taxes so assessed in behalf of the State, counties, town and cities, if not paid, will under the Statutes of North Carolina become a first lien upon the property of the plaintiff in North Carolina and will be a cloud upon the title to said property, and if said taxes are not paid as assessed, the penalties as provided by law will attach and its property will be sold for the taxes, all to the great damage of plaintiff for which it has no adequate remedy at law.

Prayer.

Wherefore, and for as much as plaintiff is remediless in the premises, according to the common law, and remediable only in

equity, and that plaintiff may not be subjected to a multi-
37 plicity of suits which would otherwise develop, and may not suffer irreparable injury and damage, and may be permitted to pursue and carry on its business without unlawful hindrance and destruction, and that the railroads by plaintiff operated in the State of North Carolina as aforesaid and its other property herein may not be subjected to illegal liens and clouds, plaintiff prays for a writ of subpœna to issue against the defendants and each and every one of them named and described as aforesaid, to appear and full and true answer make to this bill of complaint, and that said defendant A. D. Watts state in his answer the method whereby he reached the so-called final assessment, but not under oath, answer under oath being hereby waived, and that said defendants, and each of every one of them, be enjoined by final decree and, meanwhile, by a preliminary injunction as follows, to wit:

That said A. D. Watts, as the Commissioner of Revenue of North Carolina, be enjoined and restrained from certifying to the State Auditor the said illegal ad valorem assessment as the value upon which shall be calculated the amount of taxes which plaintiff shall pay as a franchise or privilege tax.

That Baxter Durham, as Auditor of North Carolina, be enjoined and restrained from charging to plaintiff for collection and that Benjamin R. Lacy, as State Treasurer, be enjoined and restrained from collecting from the plaintiff the franchise or privilege
38 tax on the assessment herein complained of until the final order of this Court.

That James S. Manning, as Attorney General of North Carolina, be enjoined and restrained from instituting or authorizing the institution of any suit or proceedings to collect any tax based upon said illegal assessment until the final order of this Court.

That each of the defendant sheriffs aforesaid of the respective counties be enjoined and restrained from collecting or taking any steps to collect from plaintiff upon the proportion of said assessment apportioned to and certified by the Revenue Commissioner as being apportioned to his county, any and all taxes levied thereon for county, township, or other taxing district purpose until the final order of this court.

That each of the defendant city or incorporated town Tax Collectors of the respective cities and towns aforesaid be enjoined and restrained from collecting or taking any steps to collect from plaintiff upon the proportion of said assessment apportioned to and certified by the Revenue Commissioner to the respective Mayors of said cities and towns as being apportioned to his respective city or town, any and all taxes levied thereon for city, town, or other municipal purpose until the final order of this court.

That each of the defendant Tax Collectors of School Districts be enjoined and restrained from collecting or taking any steps to collect from plaintiff any taxes levied on said void assessment, until the final order of this Court.

39 That on final hearing the Revenue Commissioner be enjoined and commanded to cancel the illegal assessment afore-

said and to withdraw from the several Chairmen of the County Commissioners and the Mayors of each city or incorporated town to which certificate of a proportion thereof has been made and from all others to whom certificate thereof has been made, the certificate thereof so made.

Plaintiff further prays that the tax statutes of North Carolina herein alleged to be unlawful be decreed by this Court to be unconstitutional and invalid, and that no assessment for taxation be made against plaintiff thereunder, and no tax be levied against or collected from plaintiff thereunder; and for all such other, further, general, and special relief as in equity it may be entitled to.

This is the first application for injunction in this cause.

S. R. PRINCE,
Solicitor for Plaintiff.

L. E. JEFFRIES,
MANLY, HENDREN & WOMBLE,
A. B. ANDREWS,
Of Counsel.

DISTRICT OF COLUMBIA,
City of Washington:

F. S. Wynn, being duly sworn, deposes and says that he is Vice-President of the Southern Railway Company, the above-named plaintiff, which is a corporation; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

F. S. WYNN.

Subscribed and sworn to before me this 20th day of September, 1921.

HARRY K. PIMPER, [SEAL.]
Notary Public, District of Columbia.

Filed in this office Sept. 22, 1921.
R. L. BLAYLOCK,
Clerk.

State of North Carolina, Southern Railway Company	Main track miles.	2d track miles.	All track miles.	Reproduction cost new.	Reproduction cost less depreciation.	Ratio reproduction cost less depreciation to reproduction cost new.
Wholly owned and used	595.904	50.667	863.351	$28,648,514	$24,282,028	85
Wholly owned but jointly used with the Western Telegraph Company	.....	.....	.....	$42,964	$24,641	57
Wholly used but not owned, leased from—						
The Atlantic and Danville Railway Company	22.178	.....	23.557	$341,888	$276,997	81
North Carolina Railroad Company	223.548	91.342	443.105	11,148,528	9,318,201	84
The Atlanta & Charlotte Air Line Railroad Company	42.763	1.336	65.695	2,228,220	1,908,742	86
The North & South Carolina Railroad Company	3.704	.....	4.763	54,437	45,633	84
State University Railroad Company	10.154	.....	11.501	159,457	126,525	79
Atlantic & Yadkin Railway Company	160.087	.....	184.086	3,282,353	2,693,272	82
Hight Point, Randleman, Ashboro & Southern Railroad Company	26.928	.....	33.783	342,427	262,626	77
Yadkin Railroad Company	40.559	.....	51.042	643,073	508,877	79
Tallassee Power Company	5.791	.....	6.287	141.151	122,202	87
The North Carolina Midland Railroad Company	55.570	.....	62.645	1,480,742	1,213,546	82
Southern Railway—Carolina Division	106.667	.....	124.532	3,731,063	3,134,271	84
Transylvania Railroad Company	41.936	.....	49.491	824,409	675,640	82
Total	739.885	92.678	1,060.487	$24,377,748	$20,286,532	83

Jointly used but not owned, leased from—						
Tallassee Power Company (jointly used with Winston-Salem Southbound Railway Company).	5.322	.....	6.812	$236,591	$220,886	93
Southern Railway—Carolina Division (jointly used with the Western Union Telegraph Company)	.....	.....	.....	11,581	6,694	58
Transylvania Railroad Company (jointly used with the Western Union Telegraph Company)...	.....	.....	.....	9,553	6,832	71
Total	5.322	.....	6.812	$257,725	$234,412	91
Grand total owned	595.904	50.667	863.351	$28,691,478	$24,306,669	85
	5.322	.....	6.812			
Grand total used	1,335.789	143.345	1,923.888	$53,326,951	$44,827,613	84

DISTRICT OF COLUMBIA,
City of Washington:

Before me, Harry K. Pimper, a Notary Public, in and for said District, personally appeared D. W. Lum, who, being first duly sworn, on oath states:

I am the Special Engineer of Southern Railway Company, in charge of its Valuation Department, and as such have received from the Bureau of Valuation of the Interstate Commerce Commission what is known as the Engineering Report of said Bureau. The foregoing page is a true and exact copy of page 69 containing the summary of said report, the original of which is on file in my office.

D. W. LUM.

Subscribed and sworn to before me this 20th day of September, 1921.

HARRY K. PIMPER,
Notary Public, District of Columbia.

42 PLAINTIFF'S EXHIBIT "B."

Showing Counties in North Carolina Through Which Southern Railway Operates and the Horizontal Reduction in Assessment of Real Property, Except Railroad Property Within Right-of-Way, Made by Each County, if Any Was Made, for the Year 1921; *Also Showing Increase in Rate of Taxation,* 1921 *Over* 1920, *in Each of said Counties.*

Name of county.	Horizontal reduction in per cent in assessed value.	Increase in rate of taxation in cents per $100.
Alamance	15%	$0.63
Alexander	33⅓	.56
Bertie	25	.38
Buncombe	0	.39
Burke	33⅓	.43
Cabarrus*	25	..
Caswell	33⅓	.84
Catawba	30	.57
Cherokee	0	.17
Cleveland	15	.28
Davidson	30	.63
Davie	15	.33
Durham	25	.48
Edgecombe	50	.34½
Forsyth	0	.28
Gaston	25	.54
Gates	10	.18
Granville	33⅓	.55
Guilford	0	.15

Name of county.	Horizontal reduction in per cent in assessed value.	Increase in rate of taxation in cents per $100.
Halifax	40	.59
Haywood	25	.38
Hertford	33⅓	.56
Henderson	0	.59
Iredell	0	.24
Jackson	0	.37
Johnston	33⅓	.56
McDowell	0	.35
Macon	0	.29
Madison	33⅓	.67
Mecklenburg	16⅔	.40½
Nash	50	.48
Orange	20	.44
Person	0	.43
Polk	0	.12¼
Randolph	33⅓	.42
Rockingham	25	.51
Rowan	10	.43
Rutherford	10	.40
Surry	25	.48
Swain	0	.68
Transylvania	0	.40
Vance	33⅓	.44¼
Wake	0	.19
Wayne*	33⅓	..
Wikes	20	.55
Wilson	33⅓	.50

43 *Application for Interlocutory Injunction.*

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Comes the above-named plaintiff and shows the Court:

That it has instituted in this Court by bill of complaint an action against A. D. Watts, as Commissioner of Revenue of the State of

*The 1921 tax rates for Cabarrus and Wayne counties have not yet been fixed and, therefore, for those two counties the increase for 1921 is not shown.

North Carolina, and other defendants as shown in said bill which is now referred to and made a part of this application, the object and purpose of the action being to secure from this Honorable Court an order enjoining preliminarily and perpetually the defendants, who are tax assessing, collecting, and enforcing officers of the State of North Carolina and its municipal subdivisions, from collecting or instituting proceedings to collect State, county, municipal, or other taxes levied upon or based upon an illegal overassessment of plaintiff's property, made and certified to them by the Revenue Commissioner of North Carolina, which assessment is contrary to the Constitution and laws of North Carolina and the Constitution of the United States. The bill alleges and sets forth the grounds of un-
44 constitutionality of the assessment and of the statutes of North Carolina under which said invalid assessment was made and under which the illegal taxes will be collected by the defendants named in said bill unless restrained by this Honorable Court, all of which is more fully alleged, set out, and explained in the bill of complaint filed herein.

Plaintiff alleges that the franchise tax levied under Section 82 of the Revenue Act of North Carolina, ratified March 8, 1921, is unconstitutional and that no tax can be levied thereon under any assessment, and the action of the State's tax collecting officer in the execution of said void statute is sought to be enjoined. Said tax is due and payable on or before the 15th day of October, 1921, and if not paid by December 1, 1921, a penalty of ten per cent (10%) is added to such tax.

The ad valorem taxes levied by the counties on said illegal assessment is due on the first Monday in October, and unless paid, the Sheriff may levy and sell property of this plaintiff after November 1, 1921.

The municipal and other taxes levied upon said illegal assessment will become due and the collection thereof will be undertaken prior to the determination of this cause unless the tax collecting officers are restrained.

Wherefore, application is made under Section 266 of the Judicial Code for an interlocutory injunction as prayed for in said bill, and this Court is petitioned to call to his assistance to hear and determine this application two other judges, and that the statutory
45 notice of the hearing of this application be given the Governor and the Attorney General of the State of North Carolina and each of the defendants to the said bill, and an order issue requiring the defendants to show cause at the time and place to be fixed by this Court according to law why said interlocutory injunction should not issue as prayed for.

This application is based upon the verified bill of complaint on file herein.

S. R. PRINCE,
Attorney for Plaintiff.

46 *Order of District Judge on Application for Interlocutory Injunction.*

Filed Sept. 22, 1921.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The application for an interlocutory injunction was presented to me this 22" day of September, 1921; and having read and considered the verified bill filed in this cause, and the application for a hearing for interlocutory injunction under Section 266 of the Judicial Code, and being advised that for the reasons set forth in said application and upon the grounds stated therein and in the verified bill, plaintiff is entitled to have its application heard under Section 266 of the Judicial Code:

It is ordered, that the application be filed and a hearing of the application for an interlocutory injunction be had and proceeded with in accordance with Section 266 of the Judicial Code as amended by Act of Congress approved March 14, 1913, and such hearing is set down for Oct. 6", 1921, at the United States Court rooms in the city of Greensboro, North Carolina, at 11 o'clock a. m.

It is further ordered, that notice of said hearing, not less than five days, shall be given to the Governor and the Attorney General of the State of North Carolina, and to each of the defendants to this suit. And I hereby call to my assistance at said hearing of said application the Honorable Edmund Waddill, Circuit Judge of this Circuit, and the Honorable Henry G. Connor, District Judge of the Eastern District of North Carolina.

47

This September 22nd, 1921, at Greensboro, North Carolina.

JAS. E. BOYD,
District Judge.

Endorsed: Filed in this office Sept. 22, 1921. R. L. Blaylock, Clerk.

48 *Notice of Hearing of Application for Interlocutory Injunction under Judicial Code, Section 266.*

Filed Sept. 26, 1921.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

To Honorable Cameron Morrison, Governor of the State of North Carolina; Honorable James S. Manning, Attorney General of the State of North Carolina; Honorable A. D. Watts, Revenue Commissioner of the State of North Carolina; Honorable Baxter Durham, Auditor of the State of North Carolina; Honorable Benjamin R. Lacy, Treasurer of the State of North Carolina; and to each of the defendants named in the above bill:

You, and each of you, are hereby notified that the Southern Railway Company, plaintiff, has filed its verified bill of complaint in the District Court of the United States for the Western District of North Carolina against A. D. Watts, Revenue Commissioner, et al., praying an injunction against the named tax assessing, collecting and enforcing officers of the State of North Carolina and its municipal subdivisions from collecting or instituting proceedings to collect, State, county, municipal or other taxes levied upon or based upon the alleged illegal over-assessment of plaintiff's property for
49 & 50 the year 1921, made and certified to by the Revenue Commissioner of the State of North Carolina, and also praying that certain tax laws of North Carolina be declared unconstitutional, as will appear from the bill filed herein.

In this cause plaintiff has made application for an interlocutory injunction under Section 266 of the Judicial Code of the United States. The application for such interlocutory injunction will be heard in the United States District Court, in the city of Greensboro, North Carolina, on the 6" day of Oct., 1921, at 11 o'clock a. m. and you, and each of you, are notified to appear at said time and place and show cause, if any, why the interlocutory injunction prayed for should not be granted.

Done in open court this 26" day of Sept., 1921.

JAS. E. BOYD,
Judge.

Endorsed: Filed in this office Sept. 26, 1921 R. L. Blaylock, Clerk.

51 *Subpœna.*

Issued Sept. 26, 1921.

UNITED STATES OF AMERICA,
Western District of North Carolina, ss:

The President of the United States of America to —— ——, Greeting:

You are hereby commanded to appear before our District Court of the United States of America for the Western District of North Carolina, at Greensboro in said district, within twenty days after the service of this subpœna upon you, exclusive of the day of such service, to answer the bill of complaint of the Southern Railway Company this day filed in the Clerk's Office of said court in Greensboro, North Carolina, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

For the Marshal of the United States for the Western District of North Carolina to execute.

Witness the Honorable James E. Boyd, Judge of the District Court of the United States of America for the Western District of North Carolina, and the seal of said court hereunto affixed. Issued at Greensboro in said district, this 26" day of Sept., 1921.

R. L. BLAYLOCK,
Clerk.

52 *Amendment to Bill of Complaint.*

Filed Sept. 30, 1921.

In the District Court of the United States for the Western District of North Carolina.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al

Plaintiff respectfully represents and shows that since the filing of the complaint in this case it has received information that John A. Lyerly, Sheriff of Buncombe County, who is a defendant herein, has nothing to do with the collection of taxes in said County, but that under a special Act of the Legislature N. A. Collins is the Tax Collector for said County.

Wherefore plaintiff prays that it have leave to make N. A. Collins a party defendant and have process served upon him.

MANLY, HENDREN AND WOMBLE,
Of Counsel for Plaintiff.

53 *Order Making N. A. Collins, Tax Collector, Party.*

Filed Sept. 30, 1921.

In the District Court of the United States for the Western District of North Carolina.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Order.

Upon consideration of the amendment to the complaint this day filed herein, it is ordered and adjudged that N. A. Collins Tax Collector of Buncombe County, under a special Act of the Legislature, be and he is hereby made a party defendant, and that process issue and be served upon the said Collins.

JAS. E. BOYD,
U. S. Judge.

54 *Motion to Dismiss Bill.*

Filed Octo. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

SOUTHERN RAILWAY COMPANY, Paintiff,

vs.

A. D. WATTS et al., Defendant-.

Motion.

Come now the defendants A. D. Watts and others named as defendants in the complaint filed in this suit, and move the Court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss this suit, because it is conceded in the complaint that the plaintiff owes and is liable to pay the defendants' taxes on property situated within the State of North Carolina and in the several counties named in the complaint and in the several cities, towns and taxing districts named in the complaint property of the value of $65,542,202.00 on which said property the plaintiff, as it appears in its

said complaint has not paid or tendered payment of the taxes due thereon.

JAMES S. MANNING,
Attorney General of N. C.;
FRANK NASH,
Asst. Attorney General,
Solicitors of the Defendants.

GEO. H. BROWN,
LOCKE CRAIG,
WM. P. BYNUM,
KING, SAPP & KING,
Of Counsel.

55 *Order Denying Motion to Dismiss.*

Filed Octo. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The defendants this date moved the Court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss the suit upon the grounds stated in said motion.

Upon consideration thereof, the Court denies the motion to dismiss the suit.

It appearing to the Court that the application for a preliminary injunction has been continued by agreement of parties, which agreement has been filed in this cause, and it further appearing that by said stipulation the plaintiff agrees to pay the taxes which may come due as they come due to the counties, cities, towns, and other taxing districts of the State of North Carolina on the valuation stated in the stipulation filed herein this date.

EDMUND WADDILL, JR.,
U. S. Circuit Judge.
JAS. E. BOYD,
H. G. CONNOR,
U. S. District Judge.

56 *Amendment to Bill and Order Making W. L. Murray Party Defendant.*

Filed Oct. 10, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Comes, the plaintiff and moves the Court to enter an order permitting plaintiff to amend its complaint filed in this cause in the following particular:

That D. M. Morris, one of the defendants, sued as Tax Collector of the City of Greensboro, North Carolina, be stricken as defendant and that W. L. Murray, the present Tax Collector of Greensboro be substituted as defendant.

S. R. PRINCE,
Solicitor for Plaintiff.

As counsel for defendants, consent is given to the above amendment, and this may be taken as acceptance of service of the amendment.

WM. P. BYNUM,
Counsel for Defendants.

The above motion for leave to amend is granted, and it is ordered that the amendment be filed.

JAS. E. BOYD,
Judge.

57 *Order Allowing Motion for Leave to Amend Complaint by Adding Thereto Sec. 12½ and Amendment.*

Filed Octo. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The plaintiff this date moved the Court for leave to amend the complaint herein by adding thereto Section 12½, on page 33 of the bill. Upon consideration thereof, it is ordered that the motion be allowed and the amendment be filed.

JAS. E. BOYD, *Judge.*

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Comes, the plaintiff and shows to the Court that since the filing of its bill in this cause on the 22nd day of September, 1921, Honorable Baxter Durham, State Auditor, under date of Sept. 22nd, certified to plaintiff, which certification was received on September 24th, 1921, the so-called franchise or privilege tax assessed under the provisions of Section 82 (6½) of the Revenue Laws, Chapter 34, North Carolina Public Laws of 1921, demanding payment of the aggregate amount of $96,306.35, this sum being one-tenth of one per cent on the aggregate assessed valuation for ad valorem purposes of
58 $96,306,357.00, as fixed for the year 1921 by the Commissioner of Revenue.

Wherefore, plaintiff moves the Court to enter an order permitting plaintiff to amend its complaint by adding thereto the following Section 12½, on page 33, of said complaint.

"12½. Plaintiff further shows that even if the said so-called franchise tax of one-tenth of one per cent is not illegal and void as a

franchise tax but should be decided by the Court to be a valid tax, nevertheless plaintiff is entitled to the relief prayer because the State Auditor has demanded of plaintiff as a franchise tax for the year 1921 the sum of $96,306.35, which is one-tenth of one per cent of the aggregate assessed valuation of plaintiff of $96,306,357.00, fixed for the year 1921 by the Commissioner of Revenue for ad valorem purposes, whereas under the provisions of Sec. 82 (3½) of the Revenue Act of North Carolina of 1921 plaintiff should be required to pay only upon one-half of such value for the reason that the proportion of the capital stock of plaintiff, a foreign corporation, apportionable to North Carolina is less than one-half of the assessed value for taxation of all the property of plaintiff in North Carolina for the year 1921. This demand made by the State Auditor of the plaintiff if enforced denies to plaintiff the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and violates the Uniformity Clause of Section 3, Article 5, of the Constitution of North Carolina. And plaintiff prays the Court, if the said so-called franchise tax should be held valid, to decree that plaintiff's franchise tax shall be calculated with reference to the sum of one-half of the total assessed value of all property of plaintiff in North Carolina."

S. R. PRINCE,
Solicitor for Plaintiff.

As Counsel for defendants, consent is given to the above amendment, and this may be taken as acceptance of service of the amendment.

WM. P. BYNUM,
Counsel for Defendants.

58½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY
vs.
A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Answer.

James S. Manning,
Attorney-General,
Frank Nash,
Assistant Attorney-General,
Solicitors for the Defendants.

W. P. Bynum,
George H. Brown,
Locke Craig,
Thomas D. Warren,
Sidney S. Alderman,
Of Counsel.

59 *Answer.*

Filed Nov. 30, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Answer.

Come now A. D. Watts and the other defendants in the above entitled suit and, answering the complaint filed by the plaintiff therein, say:

1. The allegations of article one are admitted, except that the allegation that the mileage of railroad owned and operated by the plaintiff in North Carolina is 1,093 miles refers only to the first main lines of said roads and does not include the mileage of second main lines and side tracks, which added to the other raise the mileage of lines of railroad owned and operated by plaintiff in this State to 1,641.80 miles instead of 1,093 as alleged. This does not include the so-called independent lines returned and reported by plaintiff to the Revenue Commissioner, all or a majority of the stock of which is owned by the plaintiff, thus giving it absolute control of those lines also. The mileage of these lines is 423.62, which added to the mileage of the other lines makes a total mileage of railroad owned, operated, leased, and controlled by the plaintiff in North Carolina, 2,065.42 miles. On its main line, running from Washington to Atlanta, Georgia, and passing through the State of North Carolina from Virginia to the South Carolina line, the plaintiff has a double track.

2. The allegations of article two are admitted.

60 3. The allegations of article three and the subsections thereof are admitted, except as hereinafter stated.

Section 64 of the Machinery Act of 1921, referred to in subsection (*e*) of article three of the complaint, did not make it the duty of the Commissioner of Revenue to do the things therein stated, but made it the duty of the State Tax Commission. Thereafter there was enacted a separate statute, ratified March 8, 1921, being Public Laws, Session 1921, p. 388, whereby the powers and duties of the State Tax Commission were transferred to and imposed upon the Commissioner of Revenue. That statute, however, and the said Section 64 of the Machinery Act, of which it was amendatory, did

not require of the Commissioner of Revenue to assess the property of railroads for taxation for the year 1921, or for any year thereafter until 1924. The State Tax Commission had made the assessment of railroad properties in North Carolina for taxation for 1920, and the said assessment had been approved by the General Assembly of North Carolina at the Extra Session of 1920, Chapter 1, and adopted as the basis for taxation for the years 1920 to 1923, inclusive. The only power with reference to assessment of railroad properties given to the Commissioner of Revenue by the Public Laws of 1921 was the power to review such assessment given by the Machinery Act of 1921, Section 28 (*g*).

Section 65 of the said Machinery Act referred to and the proviso thereof quoted in subsection (*f*) of article three of the complaint is the statute particularly controlling the assessment of the property for taxation of railroads doing interstate commerce, operating both within and without North Carolina.

The Section 82 (6½) of the Revenue Act of 1921, referred to and quoted in subsection (*g*) of article three of the complaint, was first enacted by the General Assembly at the Extra Session of 1920, Public Laws of that year, Chapter 1, Section 7*d*, and was carried forward without change in the Revenue Act of 1921. The said Section 82 (6½) was a substitute for Sections 77 and 78 of the Revenue Act of 1919, which imposed a privilege tax on railroads for
61 the privilege of doing intrastate business in North Carolina, based on gross earnings per mile within the State. The provisions of Sections 77 and 78 of the Revenue Act of 1919 had existed in the laws of North Carolina for many years. The said Section 82 (6½) substituted for the old privilege tax on gross earnings per mile a new form of privilege or franchise tax upon all railroads for the privilege of doing intrastate business within North Carolina, based upon the total properties of each of said railroads within North Carolina, as assessed under the Machinery Act for ad valorem property taxation.

The allegations of subsection (*h*) of article three of the complaint are admitted, and it is alleged that the said income tax is not only levied upon railroads, but that the same tax is levied in the same way upon all corporations doing business within North Carolina, foreign and domestic, railroad corporations, and others, equally and without discrimination.

4. The allegations of article four of the complaint are admitted, except as hereinafter qualified or denied. The Revenue Commissioner did not, in 1921, assess the properties of the plaintiff for ad valorem taxation at ninety-six million three hundred and six thousand three hundred and fifty-seven dollars ($96,306,357), as alleged; he made no assessment of the said properties and had no authority under the law to make such assessment. His only authority was to review the assessment of 1920 made by the State Tax Commission and approved by the General Assembly as aforesaid, on an application of the plaintiff to review the said assessment. He did review the assessment and did reduce the same from ninety-six

million six hundred and five thousand six hundred and ninety-four dollars ($96,605,694) to ninety-six million three hundred and six thousand three hundred and fifty-seven dollars ($96,306,357).

It is denied that at the hearing before the Revenue Commissioner facts were adduced showing that the said valuation was in excess of the true actual value of the property as the said term is defined in Section 28 (*e*) of the Machinery Act. Upon the petition of the plaintiff for a further review of the assessment by the State
62 Board of Equalization, the Commissioner of Revenue, sitting with the board and as a member thereof, granted the application for the hearing, and after due consideration of the documents filed and the arguments and statements made, was of the opinion that the valuation theretofore made by the State Tax Commission was fair and just, and with the advice and approval of the other members of the board declined to change or reduce the same further.

5. The allegations of article five of the complaint are denied, except as hereinafter specifically admitted. Further answering that article, the defendants say that the said assessment of the plaintiff's property in North Carolina for 1921, being the assessment made by the State Tax Commission for 1920 and reduced by the Commissioner of Revenue as aforesaid, was the true value in money of the said properties for tax purposes as the same is defined in Section 28 (*e*) of the Machinery Act. It is denied that the State Tax Commission or the Commissioner of Revenue has not advised the plaintiff of the separate amounts or values at which its tangible property and its franchise or intangible property were assessed for taxation. The sum of the values of the said tangible property and of the said franchise or intangible property is the basis of ad valorem taxation, and the plaintiff, as alleged in the complaint, has been informed of the separate and total assessments. The defendants deny that they have knowledge or information sufficient to form a belief as to what advice the State Tax Commission gave the plaintiff in 1920 as to its method of arriving at the assessment of plaintiff's property made by the said Commission for the years 1920 to 1923, inclusive. It is denied that the State Tax Commission used the method of capitalization of the plaintiff's net income for North Carolina exclusively in arriving at the said assessment. As required by Section 64 of the Machinery Act, the State Tax Commission, in 1920, in determining the value of the tangible and intangible property of the plaintiff for purposes of taxation, gave due consideration to all those modes, methods and factors therein required to be considered and used.

And as further required by Section 65 of the Machinery Act,
63 the State Tax Commission gave due consideration to the character of the roadbed and fixed equipment of the plaintiff in North Carolina, to the number of miles of double track in the said State, to the amount of gross and net earnings per mile of road in the State, and to all other factors which would give a greater or less value per mile of road in this State than the average value for the plaintiff's entire system.

By the application of the foregoing methods required by the said

statute to be used, except the capitalization of net income method and the stock-and-bonds method, the State Tax Commission arrived at a figure for the valuation of the properties of the plaintiff in North Carolina in excess of one hundred million dollars ($100,000,000). By due consideration, then, of the capitalization of the plaintiff's net income for the State of North Carolina at 6 per cent, and of the market value of the plaintiff's stocks and bonds and other securities, this figure was reduced in favor of the plaintiff from one which would otherwise have been in excess of one hundred million dollars ($100,000,000) to that finally adopted of ninety-six million six hundred and five thousand six hundred and ninety-four dollars ($96,605,694). The consideration by the State Tax Commission of the method of capitalization of the plaintiff's net income at 6 per cent, instead of working to the disadvantage of the plaintiff, worked to its advantage and had the effect of materially lowering what would otherwise have been a higher assessment.

The Revenue Commissioner did not make an assessment for 1921 and was not authorized by law to make such assessment. He merely exercised the authority given him to review the said assessment of 1920, and reduced the same to ninety-six million three hundred and six thousand three hundred and fifty-seven dollars ($96,306,357), as hereinbefore stated, refusing to reduce the said assessment of 1920, except by the application to it of certain reductions on properties of the plaintiff lying off the right of way, as hereinafter stated.

64 The Commissioner of Revenue used no method in making an assessment for 1921, since he made no such assessment. He merely found that no reason existed for reducing the assessment for 1920, except as hereinbefore stated.

It is denied that the method used in assessing the properties of the plaintiff was illegal and that the result was an over-assessment thereof.

(*a*) It is denied that the method of capitalization of the plaintiff's net income in North Carolina was the method used by the State Tax Commission or the Commissioner of Revenue exclusively. That method was used merely as one consideration in connection with other considerations, as hereinbefore stated. In the application of that method, in so far as it was used, it is admitted that the average net income of the plaintiff in North Carolina for the five-year period from 1915-1919 was obtained by deducting from revenues allocated to North Carolina the average annual taxes paid in said State and the average annual operating expenses allocated to that State The defendants aver that the determination of the net income for North Carolina is justly and fairly arrived at by that method. It is admitted that the allocation of operating expenses by the plaintiff to any branch or division of plaintiff's railroad or to any State is not made with mathematical accuracy. The defendants aver that the allocation of operating revenues to any branch or division of a railroad or to any State is made with mathematical accuracy, and that the allocation of expenses, although it my not be mathematically accurate, is made by the plaintiff itself regularly according to a method devised by the plaintiff; that this method is the most accu-

rate which the plaintiff has been able to devise; that it is impossible to devise a method of such allocation which will be absolutely accurate, and that the system used by the plaintiff approximates accuracy. It is denied that the laws and regulations of North Carolina prescribe the methods of accounting or of allocation of revenues and expenses which the plaintiff shall adopt; the said laws and regulations merely require of the plaintiff reports of gross revenue, gross operating expenses, and net revenue. The plaintiff devises its own methods of allocating these items to obtain the figures re-
65 quired to be reported by the laws of the State. It is denied that under the existing accounting methods of the plaintiff of allocating expenses to North Carolina, operating expenses so allocated are understated and net income overstated. It is admitted that only expenses accruing within that State are charged to State expenses, while some traffic passing through the State is assembled or originates at and is destined to terminal points without the State at which operating expenses accrue, no part of which is apportioned to North Carolina, while the mileage revenue therefrom is apportioned to this State. On the other hand, the defendants aver that enormous amounts of interstate traffic of the plaintiff originate in North Carolina, destined to points without North Carolina; that large operating expenses accrue at the points of origin in this State and are wholly apportioned to this State, whereas only a very small proportion of the mileage revenue from such shipments is apportioned to North Carolina and large proportions of such mileage revenue are apportioned to other States, ac-ros which such shipments are made without the corresponding allocation to those States of any part of the terminal expenses accruing at the points of shipment in North Carolina. The defendants further aver that the same is true as to large amounts of interstate traffic coming from without North Carolina and terminating within North Carolina. For illustration, approximately one train-load of tobacco leaves Winston-Salem, North Carolina, every day over the plaintiff's lines destined for points in other States. In the assembling, preparation and initiating of these shipments there are large terminal expenses at Winston-Salem, all of which are charged in North Carolina expenses, while North Carolina revenue is credited with only a very small mileage proportion of the entire revenues from such shipments. The same thing is true of enormous shipments of granite from Mount Airy, of furniture from High Point, Thomasville and other points in the State, of lumber and other forest products of the State, and of shipments from the cotton-manufacturing belt in the Piedmont section of the State, particularly points like Charlotte, Concord, Gastonia, Greensboro, Spray, and elsewhere. While North
66 Carolina has no large cities like Atlanta or Richmond, it has a great number of smaller cities which are important shipping, receiving, and terminal points for the vast imports into and exports from this rich and highly productive State. The terminal points and expenses in North Carolina, although not concentrated in a few places, are widely disseminated and in the aggregate are very large.

The defendants are informed and believe, and so allege, that more freight origiates at, and is shipped from, Winston-Salem, N. C., over the line of the plaintiff than at or from any other point in its entire system.

In addition, there are located within North Carolina, at Spencer, the largest terminal yards and repair shop in the plaintiff's system, and other large yards at Pomona, North Charlotte, Asheville, and Selma. The defendants are informed and believe, and so allege, that about seventy-five per cent of the operating expenses at these points is applicable to interstate traffic, but that all of said expenses are charged against North Carolina revenue.

It is denied that this method of ascertaining net revenue for North Carolina works to the disadvantage of the plaintiff: (*a*) The defendants deny knowledge or information sufficient to form a belief as to whether the traffic that moves through the State of North Carolina greatly exceeds the traffic originating in and destined to North Carolina, but they aver that traffic originating in North Carolina runs through many other States, which derive great benefit of revenue from shipments for which North Carolina is charged the entire assembling and initial terminal expenses. The defendants further aver that this system of allocation of revenues and expenses devised and used by the plaintiff itself, and which the State Tax Commission adopted, is a method which evens itself up and gives the most nearly accurate allocation to the respective States through which the plaintiff's system runs; otherwise the plaintiff itself would have abandoned this system. (*b*) On information and belief, the defendants deny that the terminal expenses on traffic originating in or destined to North Carolina are much less than those
67 without the State, and they aver that the ratio of operating expenses to operating revenues in North Carolina is truly less than that of the entire system. It is admitted that the operating revenues and operating expenses for the entire system are kept with mathematical accuracy in so far as possible; and that the plaintiff's accounting thereof is done under rules prescribed by the Interstate Commerce Commission and is checked by that body and by certified public accountants. It is denied that the capitalization of the plaintiff's net income for its entire system, the determination therefrom of the value of plaintiff's entire property, and the apportionment then to North Carolina of the result, is the proper method to be used in determining the value of its properties in North Carolina. The defendants admit that the calculations made in the table of figures on page 20 of the complaint are correct. They deny, however, that the proper figure to capitalize was twenty-one million two hundred seventy-four thousand twenty-seven dollars and eighty-nine cents ($21,274,027.89), or that the figures showing the allocation of the result of such capitalization to North Carolina at various percentages, as shown on the table at the bottom of said page, are in any way the measure of the value of the properties of the plaintiff in this State or should properly be considered in arriving at the value of the said properties. The defendants aver that the system of allocation claimed by the plaintiff to be the correct one would

deny to North Carolina the benefit of fair and true property values in this State derived from the business of the plaintiff in, from, through, and into North Carolina: it is averred that the said system would give to other States through which the plaintiff's railroads run unwarranted values which should be given to this State. It is alleged that the capitalization-of-income method pointed out by the plaintiff would have the effect of working greatly to the disadvantage of a State like North Carolina, in and through whose territory the traffic of the plaintiff is dense, highly productive and valuable, and in whose territory the property values of the plaintiff are, therefore, greatly increased, and work greatly to the advantage of a State like Florida, through whose territory the traffic of the plain-
68 tiff is light and much less valuable, and in whose territory, therefore, the property of the plaintiff is much less valuable.

Besides, the defendants aver that the regions traversed by most of the lines of the plaintiff in North Carolina are more rugged and mountainous than those traversed by any other portion of its lines in any other State, and the cost of reproduction of those lines is proportionately higher than that of any other portions of the plaintiff's system. Among these lines in North Carolina having extremely high proportionate cost of reproduction are the line from Salisbury to Asheville of about 141 miles, crossing very rugged and mountainous country and having many costly bridges and tunnels; the line from Asheville to Paint Rock of about 35 miles through altogether mountainous country; the line from Asheville to Murphy of about 122 miles crossing two mountain ranges; the line from Asheville to Spartanburg of about 41 miles, crossing the Saluda range; and the line from Pomona to North Wilkesboro of 100 miles crossing very hilly country. These lines of the plaintiff cross at various places three large ranges of the highest mountains east of the Mississippi River, the Blue Ridge Mountains, the Alleghany Mountains, and the Great Smokies; and no region in any other states through which the plaintiff's line runs is in any way comparable to these parts of North Carolina. As some index of the cost of replacement of these lines through this territory, the defendants show that the actual cost of construction of the Carolina, Clinchfield and Ohio Railroad from Spartanburg, South Carolina, to Johnson City, Tennessee, traversing this same region in Western North Carolina, was $200,000 or more per mile when that road was constructed about the year 1907, when the cost of railroad construction was much less than now.

They further show that cost of construction of railroads since that date have advanced and that it would be impossible for the said C., C. & O. Railroad to be constructed now except at still larger cost. The lines of the plaintiff above referred to have a mileage of about 440 miles. Taking this actual cost of construction of the C.,
69 C. & O. Railroad in 1907 as an index, it would cost $88,000,000 to construct now the said lines of the plaintiff in Western North Carolina, without any consideration of other lines in the State, and without consideration of depots, terminal properties, real estate or other properties. The defendants aver that the cost of replacement of the plaintiff's lines through the mountains and hills of

North Carolina would be so high proportionately as to counterbalance the heavy terminal investment and expenses of the plaintiff of which it complains in other States and to prove that the method of allocation of revenue suggested by the plaintiff would be unfair to North Carolina, and prove conclusively that the assessment of the plaintiff's property for taxation in North Carolina is not excessive and does not import into North Carolina for taxation property or values which should remain in other States.

It is denied that the assessment of the State Tax Commission for 1920 or that the same assessment as reduced in 1921 by the Commissioner of Revenue, amounts to a tax upon property beyond the jurisdiction of the State, or that it is a burden on commerce among the States, or that it violates the commerce clause of the Constitution of the United States. On the other hand, the defendants aver that a use of the method of capitalization pointed out by the plaintiff would result in the exportation from North Carolina into other States of property values which should be taxed in North Carolina and should contribute to the support of that State and its subdivisions.

(*b*) It is admitted that six per cent was the percentage used by the State Tax Commission in capitalizing the plaintiff's net income to the extent that that method was used at all in arriving at the said assessment. The defendants aver that that is a proper percentage for such purpose. They aver that six per cent is the legal rate of interest in North Carolina. They deny that the percentage which should have been used for capitalization of net income was eight per cent or any higher per cent than that used. Although other States through which the plaintiff's lines run may use seven or eight per cent as a basis of capitalization, the legal rate of interest in some of these States is higher than in North Carolina. The defend-
70 ants further aver on information and belief that a great many States other than those listed by the plaintiff on page 22 of the complaint, use the same percentage for capitalization that was used in North Carolina, to-wit: six per cent, and that the said percentage was legal and proper. It is further alleged that the use of a six per cent capitalization of the plaintiff's net income for North Carolina was only one of several factors to which the State Tax Commission gave due consideration as required by law in arriving at the assessment of 1920, and that the consideration of this six per cent capitalization method had the effect of making the assessment less than a consideration of the other factors alone would have made it and resulted to the benefit of the plaintiff. The defendants further aver that interest rates on money show temporary fluctuations while the values of permanent property of railroads do not fluctuate in a corresponding manner. It is denied that ($76,470,312) seventy-six million, four hundred and seventy thousand, three hundred and twelve dollars, or any other sum less than ninety-six million, three hundred and six thousand, three hundred and fifty seven dollars ($96,306,357) is the correct valuation of the plaintiff's property in North Carolina for taxation in 1921.

(c) It is admitted that the law of North Carolina requires that in arriving at the value of the plaintiff's intangible property due consideration be given to the value placed upon the whole property by the public as evidenced by the market value of all capital stock and other securities, the values of which are based upon the earning capacity of the property, but it is denied that the law of North Carolina requires or permits this method to be employed alone to the exclusion of other methods. It is denied that the figures alleged by the plaintiff as representing the value of stocks and bonds, etc., allocated to North Carolina on the mileage proportion basis and on the gross earning basis, respectively, measure the true value of the properties of the plaintiff in North Carolina for taxation. While this stock-and-bonds method is one method to be considered in arriving at the value of intangible property of railroads, the defendants aver that market values of railroad securities and
71 other securities in general are temporarily far below normal and do not represent the true value of property upon the earning capacity of which the said figures are based, and that the value of railroad properties is relatively stable and does not fluctuate in any degree corresponding to the fluctuations in the market prices of such securities.

In answer to the allegation on page 23 of the complaint "that under no one of these accepted tests, viz., capitalization of earnings, and the market value of the stocks and bonds, is the true value of its property as much as the assessment herein complained of," the defendants aver that the statutes of North Carolina neither require nor permit that any one of the said tests be used exclusively. On the other hand, the said statutes require that the value of railroad property for taxation be determined by application of the several factors and tests hereinbefore set forth and that no one of these alone would be an accepted or proper test or method of valuation. The defendants further aver that as hereinbefore stated a consideration of the modes prescribed by law for determining the value of railroad property for taxation resulted in a valuation of the plaintiff's property in North Carolina at a figure above $100,000,000; that the stock-and-bonds method was applied by the State Tax Commission and was also duly considered as required by law along with the capitalization-of-net-income method, and that the consideration of these two methods resulted in a reduction of the valuation of plaintiff's property to the amount at which it was fixed for 1920.

6. Answering the allegations of article six of the complaint as to the so-called tentative figures of the Interstate Commerce Commission, defendants say that these figures are purely tentative and in no way final or binding. They are figures arrived at by engineers of that Commission from an estimation of the value of property of the plaintiff and other railroads based on an inventory as of June 30, 1916, and on prices prevailing June 30, 1914. The price level in general and particularly the cost of railroad construction have very greatly increased since 1914. As an illustration of this, reference is

made to the report of the plaintiff to its stockholders for the
72 year ending December 31, 1919, being its 25th annual report, and to page five thereof, wherein the plaintiff reports that the work of laying a double track on a revised grade of plaintiff's line between Washington and Atlanta had been finished; that as originally contracted and estimated this work was to cost $34,838,000, but that the actual cost of it was $52,134,000, or about fifty per cent greater. This latter sum represents the actual cost of construction of six hundred and twenty-five miles of second track, the cost of laying which is less than that of laying first track, and shows that the said second track between Washington and Atlanta cost $82,884.00 a mile on an average. The year 1914, upon the price level of which the said tentative figures of the Interstate Commerce Commission are based, was actually a subnormal period as to prices with relation both to time before and time after the said year. Therefore, the said tentative figures in no way represent the actual cost of replacement of the tangible property of the plaintiff as of the dates 1920 and 1921.

In addition, these tentative figures do not include the intangible property of the plaintiff consisting of the franchise to be a corporation, the franchise to do business as a corporation, the going concern value, the good will and other intangible property subject to taxation in North Carolina.

To the said tentative figures the plaintiff in the table on page twenty-five of its complaint adds only an estimated value of real estate at $5,000,000, which is an estimate of its land by the plaintiff itself at a value of only about two hundred dollars an acre of right of way, and the defendants aver on information and belief that the land values of the plaintiff in North Carolina are vastly in excess of that sum.

The defendants deny $67,371,142 was the actual value of the plaintiff's rolling stock for either 1920 or 1921, as alleged on page 24 of the complaint. This figure is based on prices as of June 30, 1916, as the plaintiff itself alleges, and prices of rolling stock have very greatly advanced since then. It is further denied that a mileage basis is the proper basis for apportioning such rolling stock to North
Carolina, for the reason that the reports of the plaintiff show
73 that much more than a mileage proportion of its business is carried on in North Carolina and it follows that a greater than mileage proportion of its rolling stock was and is in use in North Carolina and subject to taxation therein for these years.

It is denied that $59,904,438 is the limit of true value of the plaintiff's property in North Carolina for ad valorem purposes. It is averred that the assessment of $96,306,357 for 1921 is the true actual value thereof. It is denied that the said assessment is in excess of the true value and that any illegal tax will be collected thereon. In fact, the plaintiff itself, in its report to the Commissioner of Revenue as of date May 24, 1921, admitted that the taxable value of its property in North Carolina was more than $59,904,438 and that it was as much as $68,000,000. It is denied that the Commissioner of Revenue assessed the plaintiff's property as alleged in the said article

of the complaint; the said assessment was made by the State Tax Commission, and was correct for 1920 and for 1921 as reduced by the Commissioner of Revenue.

It is admitted that the plaintiff does not concede that the valuation found by the Interstate Commerce Commission under the Interstate Commerce Act is the true value of its property for tax purposes as required by the Constitution and laws of North Carolina. On the other hand, defendants are informed and believe and therefore allege that the plaintiff, appearing before the Interstate Commerce Commission for the purpose of securing higher rates, maintained that the value of its property in North Carolina was far greater than that shown by the said tentative figures; that about the time said assessments now in question were made for taxation in North Carolina, the plaintiff was contending before the Interstate Commerce Commission that that body should take as the value of plaintiff's property the plaintiff's investment account which showed property of the plaintiff in North Carolina as allocated on a gross earnings basis to be of the value of $111,308,323; that the plaintiff not only presented the investment account figures but contended as is shown by the decision of the Interstate Commerce Commission in the matter of the said application for increased rates, called Docket Ex Parte
74 No. 74, that "the aggregate value of the property * * * held for and used in the service of transportation, is substantially in excess of the aggregate of the amounts shown as their respective book costs," that is, the plaintiff contended that the actual value of property in North Carolina was in excess of $111,308,323; that when asking for increased rates and to secure the same the plaintiff contended that its property in North Carolina was worth in excess of $111,308,323, as compared with $96,306,357, at which it is assessed for taxation in North Carolina, and as compared with the figure of $59,904,438 which the plaintiff now contends to be its value in this suit attacking North Carolina tax assessments as excessive.

The defendants further show that, using round numbers, the State of North Carolina, in determining the said assessment for 1920, took only 86.4 per cent of the $111,000,000 valuation of the plaintiff's property in North Carolina shown by the plaintiff's investment account, whereas the Interstate Commerce Commission, in the said application to raise rates, took 91.1 per cent of the said investment account figures, and the defendants aver that the said action of the Interstate Commerce Commission is conclusive proof that the North Carolina assessments were in no way excessive.

It is denied that any showing of over assessment of its property was made by the plaintiff to the Commissioner of Revenue or that the said tentative values have any effect to prove that such over-assessment was made. It is denied that it is necessary to recognize the said tentative values in order to prevent discrimination as between the several railroads in the State of North Carolina, and it is denied that either the uniformity clause of the Constitution of North Carolina or the Fourteenth Amendment to the Constitution of the United States is violated by reason of the fact that the 1921 assessment is

not controlled, modified, or measured by the said tentative values.

It is denied that the standard return allowed the plaintiff under the Federal Control Act shows any over-assessment of the plaintiff's property in North Carolina. The said standard return was
75 based upon the test period just before the United States of America entered the World War; the said period was one of sharp depression and was, therefore, not a reflection of the earnings of the plaintiff that may be expected under normal conditions and when the provisions of the Amended Interstate Commerce Act with respect to rates and earnings become effective, nor was it a reflection of the actual value of the plaintiff's property. It is denied that a capitalization of the said standard return as allocated to North Carolina is in any way a test to be considered in arriving at the value of the plaintiff's property for assessment in North Carolina.

7. The allegations of article seven of the complaint are admitted, but the defendants aver that there were no just grounds for protest against the tax paid by the plaintiff in 1920. Its total taxes for 1919 were $971,325.87. For 1920 they were $920,367.05, or $50,958.82 less than the total taxes for 1919 before the revaluation.

8. Section 28 (*a*) of the Machinery Act of 1921 is admitted to be as quoted in article eight of the complaint. It is admitted that the reductions set out in Exhibit "B" to the complaint, referred to in article eight were made by the respective county boards of review and were not revised or changed by the State Board of Equalization and, therefore, became effective. It is denied that the assessment for 1920 as to railroads was in excess of true value. The defendants aver, however, that the assessment for 1920 of real property in general, other than railroad property devoted to purposes of transportation, was in fact in excess of true value for 1921; that the assessments of the property of the plaintiff devoted to transportation, and of that of other railroads of the State, for 1920, were already at their true value, and that the failure of the Commissioner of Revenue to make similar reductions of the assessment of the plaintiff's railroad property resulted in no discrimination and in violation neither of the Constitution of North Carolina nor of the Constitution of the United States.

Furthermore, it is denied that the Commissioner of Revenue declined to consider or to give to the plaintiff the benefit of any similar reduction in the said counties; the defendants aver that although such reductions were not applied to the right of way, lands
76 and structures thereon, that is, strictly railroad property of the plaintiff, they were applied to the property of the plaintiff lying off the right of way exactly as they were applied to other property in general, and that there was no discriminative violation by the Commissioner of Revenue of Section 3 of Article V of the Constitution of North Carolina, and no violation of the Fourteenth Amendment of the Constitution of the United States.

The defendants deny knowledge or information sufficient to form a belief as to what the amount of tax of the plaintiff for 1921 will be, but it is denied that the said tax will be discriminatory against the plaintiff as compared with other taxpayers. The defendants further

aver that the actual total amount of taxes paid by the plaintiff in 1920, in and to the State of North Carolina and the subdivisions thereof, was much less than the total amount paid by it in 1919, before the enactment of the Revaluation Act and the revaluation made thereunder, as hereinbefore alleged.

Further answering the said article eight of the complaint, the defendants aver that the Revaluation Act, Public Laws 1919, Ch. 84, was passed by the General Assembly of North Carolina in an earnest effort to make the tax laws of the State accord with Section 3 of Article V of the Constitution of the State by making the ascertainment of the true value in money of all property in the State the basis of assessment of such property for taxation. This law provided for a complete revaluation of all property in the State, real, personal, and mixed, including railroad property, Section 31, this new valuation to be used as the basis for computing the ad valorem taxes for the years 1920 to 1923 inclusive, when the same should be approved and the tax rates for the State revised by the General Assembly and when the tax rates levied by the counties, cities, towns, and special tax districts should be revised under rules to be laid down by the General Assembly.

The general revaluation of all property in the State was made pursuant to this act. Real estate in general in the State was raised about three times in value above the assessments for 1919. Railroad property in the State, exclusive of property lying off the right of
77 way and assessed by local assessors, was raised to only twice the 1919 assessment. The said revaluation and assessments were thereupon approved and adopted by the General Assembly at the Extra Session of 1920 (August), by Chapter 1 of the Public Laws of 1920, called the Revenue Act of 1920. By this statute the General Assembly adopted the revaluation assessment as the basis for the levy of taxes for the years 1920 to 1923, inclusive. This act, furthermore, revised the tax rates of the State and authorized and made the rules for the revision of tax rates by counties, cities, towns, and special tax districts, which revisions were actually made.

A sharp period of depression, affecting particularly the values of farm products and lands, followed almost immediately the said revaluation under the Revaluation Act, and real property in many counties of the State fell in market value below that at which it was assessed under the revaluation. As a result, in the Machinery Act of 1921, there was enacted Section 28 (*a*) as quoted in article eight of the complaint, which provided that county boards of commissioners and county boards of appraisers and review appointed under the Revaluation Act should sit together jointly, as county boards of review, to determine whether the valuation of real estate in the counties, as a whole, as fixed under the Revaluation Act, was in excess of the fair value of such property at the time of the meeting of the said boards of review. It provided that if it should be found that the assessments of real estate were thus excessive, the boards of review should find the average percentage of excess for their respective counties and report the same to the State Tax Commission. It further provided that the valuation as assessed under the Revaluation Act,

reduced by this average percentage of reduction, should be the valuation at which real estate in the said counties should be assessed for taxation, unless and until changed by the State Tax Commission.

The county boards of review in sixty-seven counties of the State decided to make reductions and reported them to the State Board of Equalization pursuant to these provisions. The assessments
78 of value which had been made under the Revaluation Act were reduced by these percentages and the resulting assessments became the assessments for taxation in those counties. Plaintiff's property lying off the right of way, and which was, therefore, assessed by local assessors, and by them reported to the State Board of Equalization, was reduced along with all other real property in those counties in which such property of the plaintiff was situated and in which such reductions made; and these reductions were allowed.

Inasmuch as real property in general had been raised by the revaluation assessment to three times the former assessment on an average, and the assessment of strictly railroad property by the State Tax Commission had been raised to only twice the former assessment; and inasmuch as the assessments of real property in general for 1920 were in excess of their true values for 1921, the Commissioner of Revenue properly refused to make any reductions of the assessments of strictly railroad property to correspond with the reductions made by the county boards of review on other property including real property of railroads lying off the right of way.

The defendants further aver that while the chief agricultural products of this State decreased in value in the latter part of 1920 and in 1921 more than 300 per cent, the freight rates of the plaintiff and other railroads were increased 25 per cent and their passenger rates were increased 20 per cent. Notwithstanding this, the valuation of the plaintiff's property for taxation in North Carolina as made by the State Tax Commission for 1920 and as reviewed and reduced by the Commissioner of Revenue for 1921 was by no means so great a proportionate increase over the assessment for 1919 as were the corresponding assessments of real property in general throughout the States over the assessment thereof for 1919. The following table gives as an illustration of this the figures for the counties in which are located property of the plaintiff the assessments of which it complains of. The table shows the assessment of real estate in each county named for 1919, the percentage of reduction allowed upon the 1920 assessment, and the assessment for 1920 as reduced by that percentage or the assessment as it is for 1921.

79

County.	1919.	Reduction.	1920 less reduction (1921).
Alamance	$6,844,638	15%	$20,194,408
Alexander	1,667,975	33⅓%	4,351,333
Buncombe	21,862,308	none	60,319,591
Burke	3,651,492	33⅓%	7,365,181
Cherokee	2,833,046	none	4,264,124
Caswell	1,803,197	33⅓%	6,035,442
Cabarrus	6,729,195	25%	22,658,805

County.	1919.	Reduction.	1920 less reduction (1921).
Catawba	4,692,916	30%	18,674,032
Cleveland	7,574,843	15%	23,934,918
Davie	2,294,469	15%	8,481,632
Davidson	6,957,305	30%	21,446,672
Forsyth	14,234,803	none	72,197,173
Guilford	18,884,912	none	85,158,132
Gaston	11,302,506	25%	39,258,217
Haywood	6,120,975	25%	12,994,373
Henderson	4,173,152	none	11,322,157
Iredell	7,373,388	none	26,536,439
Jackson	2,168,624	none	6,608,611
Macon	2,600,353	none	5,201,469
Mecklenburg	23,133,825	16⅔%	77,914,383
Madison	3,241,392	33⅓%	5,578,519
McDowell	2,675,983	none	8,139,746
Moore	4,173,157	25%	8,491,443
Orange	3,916,209	20%	8,068,836
Polk	1,662,018	none	5,043,541
Randolph	5,398,639	33⅓%	12,312,203
Rutherford	4,331,111	10%	17,921,378
Rockingham	8,399,673	25%	35,860,033
Rowan	9,727,065	10%	34,693,926
Swain	2,657,825	none	6,830,926
Surry	5,796,250	25%	13,986,709
Transylvania	2,044,250	none	5,304,466
Wilkes	3,788,058	20%	9,881,602
Bertie	4,055,858	20%	10,459,087
Durham	14,777,122	25%	32,570,135
Edgecombe	7,867,565	50%	17,477,528
Gates	1,986,648	10%	5,068,118
Granville	4,824,621	33⅓%	10,725,430
Halifax	8,675,643	40%	21,382,124
Hertford	2,840,986	33⅓%	7,164,779
Johnston	17,912,383	33⅓%	28,020,099
Nash	7,865,780	50%	18,150,048
Person	2,633,069	none	12,452,278
Vance	4,550,421	33⅓%	11,904,379
Wake	19,342,872	none	53,739,885
Wayne	8,449,151	33⅓%	31,548,855
Wilson	6,323,509	33⅓%	26,934,200

The defendants further attach to this answer, as Exhibit "A," a table which they ask to be taken as part of this answer, which table shows a comparative statement of assessed values in all the counties of the State for the years 1919 and 1920, showing the increases in values assessed under the revaluation over those for 1919 as to various classes of property and in particular as to real estate.

80 This table shows that on an average real property in general in the State was raised three times the assessment for 1919.

9. The defendants deny knowledge or information sufficient to form a belief as to the tax rates which will be levied in the respective counties for 1921, but it is denied that such tax rates, whatever they may be, will be discriminatory against the plaintiff, and the defendants allege that they will be uniform. It is denied that the causes which brought about a reduction in the value of real estate in general in the counties in which reductions were made applied to plaintiff's railroad property. The said reductions in value did apply to real estate of the plaintiff lying off the right of way and not part of strictly railroad property, as to other real estate. It is denied, however, that the said roalroad property decreased in value as did real estate in general. The fall in value of real estate in 1920 and 1921 was due primarily to a radical decline in the selling price of farm products, the chief factor controlling the value of farm lands. Tobacco, cotton, and other farm products of North Carolina brought phenomenally high prices in 1919 and those prices were deemed to be stable and were accepted and taken as the price level on which tax values were based in the revaluation of 1920. The prevailing average price for cotton and tobacco, our principal farm products, for the year 1919, as of which year farm lands were revalued, was approximately forty cents a pound for cotton and fifty-three cents a pound for tobacco. But those prices, as subsequent experience showed, were not stable but were temporarily and abnormally high, as were the land values dependent upon them. In the summer of 1920 and following, those prices fell off more than three hundred per cent and the value of farm lands and other real estate declined sharply with the said decline in prices. Railroads, however, were not so affected. The same volume of crops was moved by them, although farms received greatly reduced prices therefor, and instead of the prices charged by the railroads for their services being reduced, the railroads, including the plaintiff, were allowed an increase of 25 per cent in freight rates and 20 per cent in passenger
81 rates. It is, therefore, denied that the plaintiff should be given the benefit of any reduced assessment on its railroad property by reason of a decline in value of farm lands and other real property which decline does not apply to railroad property.

10. It is denied that the values of the property of plaintiff depend upon the fluctuating values of other property in the State as affected by temporary advances and declines. It is denied that the business of the plaintiff fluctuates directly or in any corresponding proportion with the values of farm lands or other real property, or the prosperity of the State it serves for any one year or temporary period of time. It is denied that the plaintiff's property has decreased in value in 1921 any further than as shown by a comparison of the assessment of the plaintiff's property for 1921 with that for 1920. Although the value of the use of the plaintiff's property may have been depressed to some extent, this is only a temporary situation and there has been no corresponding depression in the value of the plain-

tiff's permanent property and the plaintiff is entitled to no reduction in its taxable values and the failure to make such reduction is denied to be discrimination or contrary either to the uniformity clause of the Constitution of North Carolina or to the Fourteenth Amendment to the Constitution of the United States.

As to the truth of the allegation of the second paragraph of article ten of the complaint, the defendants deny that they have knowledge or information sufficient to form a belief, but they aver that if the earnings for the first six months of 1921 are correctly stated in the complaint they reflect but a mere temporary condition and the defendants are informed and believe that the earnings for the last six months of 1921 will be much larger than for the first six months. The defendants further aver that if the plaintiff's earnings were much less than normal for the first six months of 1921, they were still net earnings and are in no way comparable to the substantial and disastrous losses sustained by the farmers who, in most instances,

82 received far less than the cost of production for their crops, and in favor of whom plaintiff now claims that the tax laws and assessments of North Carolina discriminate against railroads.

The assessed values of real estate, especially farm lands, had been raised under the revaluation in some instances from three hundred to five hundred percent. As hereinbefore stated such real property was raised in valuation about three times on an average. The plaintiff's property was, however, not raised over one hundred per cent. After the allowing of the reduction made in many counties pursuant to the Act of 1921 it still remains that real property generally stands at an increased value very much greater in comparison than the increased value assessed on the plaintiff's property. It is impossible, therefore, that there can be any discrimination against the plaintiff. As showing this, reference is made to the table hereinbefore set forth in article eight and to Exhibit "A."

It is further averred that the Interstate Commerce Commission has fixed the rates for the plaintiff and other railroads on the basis practically of their investment account figures, which for the plaintiff show values of property in North Carolina to be $111,308,323, and that if the plaintiff and other railroads do not earn returns commensurate therewith, they can apply to the Interstate Commerce Commission for further advances of rates. Farmers and other owners of real property in North Carolina have no such forum in which they may seek a remedy to relieve them not only against such decreases in the earnings as the plaintiff alleges it has suffered but against the disastrous losses which the farmers themselves as well as other persons, individual and corporate, have suffered, due to depressed conditions as hereinbefore stated.

11. The truth of the first sentence of article eleven of the complaint is admitted. It is admitted that the railroad assessments prior to 1921 were fixed by a board of three, known as the State Tax Commission, but it is denied that under the laws of 1921 any assessment was fixed by the Revenue Commissioner or will be made by him

until the year 1924. On the other hand, it is averred that
83 the assessment made by the State Tax Commission in and for the year 1920 is and will be, except as reduced by the Commissioner of Revenue to correspond with reductions made on all other real property, the only assessment of property of railroads in North Carolina to be made until 1924. The question of the right of the plaintiff to appeal from an assessment of its property cannot arise until the next assessment is made in 1924, such assessment being made under the laws of North Carolina only quadrennially. The same law which gave other tax payers the right to a review of the 1920 or revaluation assessment, gave the railroads the same right of review before the Commissioner of Revenue, and the plaintiff was granted this review not only once but twice.

The defendants further aver that under the laws and procedure of North Carolina, the writ of certiorari would lie at the suit of the plaintiff to the said Commissioner of Revenue from the Superior Court of that State and that by this writ the plaintiff may at any time take up for review and appeal any proceedings by the said Commissioner of Revenue in which its legal and constitutional rights may be deemed to be violated. It is denied that anything in the tax laws of North Carolina constitutes a denial to the plaintiff of the equal protection of the law, or a violation of the uniformity clause of the North Carolina Constitution.

The defendants further aver that the valuation of which the plaintiff is now complaining in its bill was the valuation fixed by the former State Tax Commission and approved by the Legislature of 1920; that the Act of 1921 conferred upon the Commissioner of Revenue, upon petition of the plaintiff, the power to review the assessment so made by the State Tax Commission and approved by the Legislature of 1920 as aforesaid; that the plaintiff did not appeal from, or in any way invoke an interference with the valuations fixed by the State Tax Commission and approved by the Legislature in Extra Session of 1920, as aforesaid, but did petition the Commissioner of Revenue to reduce such value under the power conferred upon him by the Act of 1921; that, as hereinbefore stated, the said Commissioner of Revenue did decline to reduce said values,
84 and if the plaintiff felt itself aggrieved by the action of the Commissioner in this particular, then it was competent for the plaintiff by application to the court for a writ of certiorari to have had the action of the Commissioner of Revenue in this manner reviewed by the courts of the State, and its grievances, if any, redressed.

12. The defendants deny that the so-called franchise tax levied under the Revenue Act, Section 82 (6½), is a property tax or an ad valorem tax based on the value of property as alleged in article twelve of the complaint. It is averred that the said tax is an excise, franchise, or privilege tax imposed upon the privilege of doing a strictly intrastate business within the State of North Carolina; that the said excise, franchise or privilege tax, being levied upon the plaintiff in addition to the ad valorem property tax levied by counties, cities,

towns, and special taxing districts, does not and cannot constitute double or unequal taxation and is violative neither of Section 3 of Article 5 of the Constitution of North Carolina, nor of the Fourteenth Amendment to the Constitution of the United States. It is denied that the ad valorem assessment of the plaintiff's properties is excessive, iniquitous or damaging, and that the franchise or privilege tax of 1-10th of 1 per cent of said assessment is in any way excessive, iniquitous, damaging or illegal. It is denied that the said tax is levied under the guise of a franchise tax, but the defendants aver that it is a true franchise or privilege tax, not a property tax, and that it is entirely within the power of the State of North Carolina to levy the said franchise or privilege tax in addition to ad valorem property taxation, and that by reason of the fact that the said franchise or privilege tax is admeasured, not by any earnings from interstate commerce nor by any properties outside of North Carolina, but only by the total properties of the plaintiff within the State of North Carolina and used in the conduct of the business of the plaintiff within that State, the said tax is in no way a burden upon interstate commerce; that it is not a tax for the privilege of engaging
85 in interstate commerce, nor its payment made a condition precedent thereto, and that it violates no part of the Constitution of the United States.

12½. The allegations of article 12½, the same being an amendment to the complaint, are denied, except that it is admitted that the State Auditor has demanded of the plaintiff as an excise, franchise or privilege tax for 1921, upon the plaintiff for the privilege of exercising its franchise in this State, the sum of $96,306.36, the same being the result of a calculation based upon 1-10th of 1 per cent of the value of the property, tangible and intangible, of the plaintiff in this State, assessed for ad valorem tax, used as the measure of the extent to which the plaintiff is exercising its franchise (the privilege of engaging in intrastate commerce) in this State. The defendants deny that the Commissioner of Revenue made the assessment of the plaintiff's properties, or that he has ever assessed the same or will do so until the year 1924. The defendants aver that the said demand of the State Auditor upon the plaintiff was lawful and that the said tax was and is lawfully due to the State of North Carolina.

Further answering, the defendants aver that Section 82 (3½) of the Revenue Act has no application to railroads or to the franchise or privilege taxes on railroads; that it is a section which was enacted in 1920 and was specifically limited in its application to taxes on corporations as levied in Section 82 of the Revenue Act of 1919; that railroads and the franchise taxes thereon, were not included in any part of said Section 82 of the Revenue Act of 1919; and that when Section 82 (6½) was inserted in that section in 1920, as hereinbefore stated, shifting the provision for franchise tax on railroads to this position as a sub-section of the said Section 82, it was not intended to make the said Section 82 (3½) applicable to the said Section 82 (6½); that the said Section 82 (3½) does not apply, and never has, applied to railroads, taxes on railroads. It is denied that

the demand of the State Auditor, or the failure to apply to the
86 plaintiff the provisions of Section 82 (3½), violates either the Fourteenth Amendment to the Constitution of the United States or the Constitution of North Carolina.

13. The allegations of article thirteen of the complaint are denied

14. The allegations of article fourteen of the complaint are denied The defendants allege that it is perfectly competent for the State of North Carolina, after taxing the property of the pjlaintiff ad valorem, to levy upon the plaintiff an additional tax for the privilege of engaging in intrastate commerce in this State and an additional income tax of three per cent on its net income, which said income tax is levied equally upon all other corporations without discrimination.

15. The allegations of article fifteen of the complaint are denied.

16. It is admitted that the plaintiff will owe to the State, counties and municipalities the legally enacted tax upon whatever may be found to be the legal assessment of its property for taxes in the State of North Carolina, and the defendants aver that the said legal assessment is that fixed for 1920 as reduced for 1921 hereinbefore referred to.

The defendants further aver that the plaintiff itself has admitted in its report to the State Tax Commission hereinbefore referred to that it owes taxes on an assessment upon at least $68,000,000.

17. Answering the allegations of article seventeen of the complaint, it is denied that the said assessment is illegal and it is denied that this suit is brought to avoid a multiplicity of suits. It is denied that the said assessment is invalid; it is denied that unless the tax collecting officers of the several counties and municipalities are restrained, they will proceed to collect any illegal tax upon any illegal assessment. On the other hand, the defendants aver that the taxes which the said officer will proceed to collect are valid and lawful; that they of right will become a first lien upon the property of the plaintiff in North Carolina if not paid, as is the case with taxes upon all real property; it is denied that the said rightful lien will constitute a
87 cloud upon the title to said property against which equity should grant relief; it is denied that the plaintiff will be damaged by the remedies for collection of the said lawful and said valid taxes, and it is denied that the plaintiff has no adequate remedy at law.

Prayer.

Wherefore, The defendants, having fully answered the complaint filed in this suit, pray the Court that every and singular the prayers of the said complaint be denied and that the same be dismissed at the costs of the plaintiff.

JAMES S. MANNING,
Attorney General of North Carolina;
FRANK NASH,
Asst. Attorney General of North Carolina,
Solicitors for the Defendants.

WM. P. BYNUM,
GEORGE H. BROWN,
LOCKE CRAIG,
THOMAS D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel.

(Signed) JAMES S. MANNING,
Attorney General of N. C.

(Signed) FRANK NASH,
Asst. Atty. General of N. C.

WM. P. BYNUM,
GEORGE H. BROWN,
LOCKE CRAIG,
THOMAS D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel.

88 A. D. Watts, being duly sworn, says that he is one of the defendants in the above entitled suit, that he has read the foregoing answer to the complaint, and that it is true of his own knowledge except as to matters therein stated on information and belief, and as to them he believes it to be true.

A. D. WATTS.

Sworn to and subscribed before me this 11th day of November, 1921.

W. P. STACY,
Associate Justice N. C. Supreme Court.

EXHIBIT "A."

Comparative Statement of Taxable Values for the Years 1919 *and* 1920, *Showing Number of Acres of Land, Value of Timber, Manufacturing, Mineral, and Quarry Properties, Average Value per Acre, Value of Town Lots, Value of Real Estate, Value of Personal Property, and the Aggregate Value of Real and Personal Property Listed with County Supervisors.*

(NOTE.—This statement does not include railroad and public service corporations, banks, and corporate excess assessed by the State Tax Commission.)

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Alamance, 1919.....	257,742	$2,786,845	$10.81	$2,058,055	$6,844,638	$5,532,968	$11,377,606
Alamance, 1920.....	262,836	9,966,036	37.92	7,159,464	24,934,832	10,537,710	35,472,542
Alexander, 1919.....	157,970	1,283,419	8.12	194,050	1,667,975	1,615,101	3,283,076
Alexander, 1920.....	165,761	4,864,885	29.30	681,423	6,527,000	1,956,886	8,483,886
Alleghany, 1919.....	143,309	957,833	6.68	28,343	996,054	940,622	1,936,676
Alleghany, 1920.....	147,001	5,383,189	36.62	83,210	5,383,189	1,465,520	6,848,709
Anson, 1919.....	328,634	2,663,408	8.11	964,020	4,379,115	3,781,961	8,161,076
Anson, 1920.....	329,715	10,529,114	31.93	2,855,697	13,384,811	6,831,284	20,216,095
Ashe, 1919.....	268,508	2,094,573	7.80	73,833	2,172,551	2,555,766	4,728,317
Ashe, 1920.....	272,678	12,360,480	45.33	322,432	12,731,463	3,917,513	16,648,976
Avery, 1919.....	113,053	1,059,508	9.37	128,961	1,571,789	672,046	2,243,835
Avery, 1920.....	130,932	3,863,827	29.51	308,197	4,793,754	1,133,928	5,927,682
Beaufort, 1919.....	379,913	3,422,611	9.00	2,534,192	6,365,173	4,231,976	10,597,149
Beaufort, 1920.....	396,759	24,325,213	61.31	4,238,253	29,207,006	8,462,799	37,669,805
Bertie, 1919.....	450,883	3,040,339	6.74	862,130	4,055,859	3,467,887	7,523,746
Bertie, 1920.....	400,557	9,629,044	24.00	2,259,976	13,958,782	5,301,677	19,260,459
Bladen, 1919.....	502,723	2,655,945	5.28	287,732	3,545,259	2,250,967	5,796,226
90 Bladen, 1920.....	524,585	10,092,335	19.24	794,790	11,630,040	3,418,325	15,048,365
Brunswick, 1919....	476,230	2,406,552	5.05	490,048	2,896,600	1,640,498	4,537,098
Brunswick, 1920.....	502,593	5,477,845	10.90	970,035	7,953,027	2,017,305	9,970,332
Buncombe, 1919.....	312,643	6,664,587	21.32	13,484,771	21,862,308	9,232,489	31,094,797

Buncombe, 1920	.....	.....	....	.....	60,319,591	17,442,518	77,762,109
Burke, 1919	297,084	2,445,419	8.23	883,211	3,651,492	2,318,258	5,969,750
Burke, 1920	316,304	7,164,477	22.65	1,932,615	11,047,772	4,793,304	15,841,076
Cabarrus, 1919	208,079	2,213,175	10.64	1,734,076	6,729,195	5,406,793	12,135,988
Cabarrus, 1920	222,036	9,964,995	44.88	6,185,440	30,211,743	15,069,837	45,281,580
Caldwell, 1919	227,055	1,809,693	7.97	669,221	3,502,721	2,142,059	5,644,780
Caldwell, 1920	258,296	7,792,632	30.17	2,896,422	13,257,242	4,458,020	17,715,262
Camden, 1919	145,857	1,083,289	7.42	58,607	1,288,061	672,329	1,960,390
Camden, 1920	149,262	3,587,989	24.04	121,547	3,736,356	846,591	4,582,947
Carteret, 1919	239,554	1,703,631	7.11	1,056,084	2,993,060	1,586,379	4,579,439
Carteret, 1920	233,162	7,972,149	34.19	1,650,790	10,405,339	2,940,095	13,345,434
Caswell, 1919	262,748	1,686,517	6.42	116,680	1,803,197	2,188,466	3,991,663
Caswell, 1920	268,746	8,743,808	32.54	309,340	9,053,148	2,920,697	11,973,845
Catawba, 1919	256,932	2,460,000	9.58	1,604,830	4,692,916	5,370,515	10,063,431
Catawba, 1920	254,423	12,339,008	48.50	7,735,670	26,677,188	9,357,453	36,034,641
Chatham, 1919	404,913	3,063,242	7.04	504,565	4,082,437	3,551,644	7,644,081
Chatham, 1920	435,773	10,063,328	23.09	1,243,459	11,813,037	4,594,017	16,407,054
Cherokee, 1919	273,738	2,115,327	7.42	717,719	2,833,046	1,690,555	4,523,601
Cherokee, 1920	303,762	3,045,638	10.03	871,876	4,264,124	2,331,748	6,595,872
Chowan, 1919	99,967	1,159,788	11.60	582,677	2,007,621	1,778,608	3,786,229
Chowan, 1920	110,499	4,410,953	39.92	2,412,177	6,823,130	3,594,041	10,417,171
Clay, 1919	126,778	743,216	5.86	22,361	808,427	425,462	1,233,889
Clay, 1920	170,813	2,106,635	12.33	47,580	2,154,215	693,421	2,847,636
Cleveland, 1919	278,395	3,827,884	13.75	1,520,971	7,574,843	4,909,563	12,484,406
Cleveland, 1920	277,843	16,422,057	59.11	4,554,698	28,158,726	11,168,356	39,327,082
Columbus, 1919	458,631	3,429,606	7.48	822,207	4,922,220	4,061,355	8,983,575
Columbus, 1920	.....	.....	....	.....	15,789,229	6,600,000	22,389,229
91 Craven, 1919	364,212	2,421,364	6.65	4,354,543	7,617,226	4,097,447	11,714,673
Craven, 1920	323,112	15,488,629	47.94	13,256,829	28,745,458	9,352,424	38,097,882
Cumberland, 1919	338,497	3,116,070	9.21	2,513,375	6,348,011	4,990,251	11,338,262
Cumberland, 1920	358,317	12,835,535	35.82	7,393,804	20,522,039	7,567,734	28,089,773
Currituck, 1919	148,426	1,513,584	10.20	.....	1,733,291	705,677	2,438,968
Currituck, 1920	125,080	4,541,124	36.30	.....	4,541,124	1,033,871	5,574,995
Dare, 1919	208,400	494,859	2.37	100,929	626,963	301,642	928,605
Dare, 1920	.....	.....	....	.....	2,282,743	593,808	2,876,551
Davidson, 1919	35,442	.....	....	.....	6,957,305	3,806,554	10,763,859
Davidson, 1920	355,066	15,295,793	....	6,611,775	30,638,102	9,691,903	40,330,005

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Davie, 1919	160,640	1,529,050	9.52	358,529	2,294,469	3,043,548	5,338,017
Davie, 1920	162,798	7,224,899	44.00	2,753,491	9,978,390	3,939,443	13,917,833
Duplin, 1919	449,760	3,689,316	8.20	850,138	4,723,287	4,976,607	9,699,894
Duplin, 1920	457,279	23,071,185	50.45	1,100,364	24,211,549	7,285,518	31,497,067
Durham, 1919	178,534	3,569,232	19.99	8,021,399	14,777,121	20,808,813	35,585,934
Durham, 1920	182,608	9,530,019	52.19	19,560,602	43,426,847	66,651,182	110,078,029
Edgecombe, 1919	303,562	4,131,420	13.60	3,036,247	7,867,565	7,415,180	15,282,745
Edgecombe, 1920	309,497	24,897,646	80.44	10,054,910	34,955,056	10,256,906	45,211,962
Forsyth, 1919	230,680	2,871,776	12.45	9,546,925	14,234,803	22,223,137	36,457,990
Forsyth, 1920	237,190	13,961,294	58.86	21,757,422	72,197,173	64,402,548	136,599,721
Franklin, 1919	303,215	3,082,712	10.16	1,482,479	4,607,194	4,565,486	9,172,680
Franklin, 1920	301,008	14,667,266	48.73	1,927,314	16,594,580	6,167,700	22,762,367
Gaston, 1919	201,263	2,648,515	13.16	2,807,246	11,302,506	8,192,666	19,495,172
Gaston, 1920	211,528	14,233,409	67.29	11,767,733	52,344,289	22,745,959	75,090,248
Gates, 1919	196,651	1,830,440	9.31	136,799	1,986,648	1,433,647	3,420,295
Gates, 1920	158,145	5,250,857	33.20	326,225	5,631,242	1,663,562	7,294,894
Graham, 1919	177,414	984,505	5.55	28,350	2,132,988	599,954	2,732,942
Graham, 1920	195,803	2,106,480	10.76	46,350	4,869,736	1,337,240	6,206,976
Granville, 1919	319,516	2,839,542	8.88	1,267,086	4,324,621	4,571,084	8,895,705
Granville, 1920	334,774	9,515,391	38.20	3,463,640	16,088,145	6,775,885	22,864,030
Greene, 1919	159,369	1,946,611	12.21	295,283	2,250,882	3,391,246	5,642,128
Greene, 1920	159,276	13,358,939	83.87	984,687	14,343,626	5,666,466	20,010,092
Guilford, 1919	393,239	6,646,810	16.90	9,183,654	18,884,912	12,058,586	30,943,498
Guilford, 1920	394,318	20,889,651	52.98	22,906,580	85,158,132	30,894,441	116,052,573
Halifax, 1919	409,577	4,404,845	10.75	2,349,656	8,675,643	10,385,714	19,061,357
Halifax, 1920	425,386	16,359,967	38.22	6,436,375	35,636,872	12,536,587	48,173,459
Harnett, 1919	353,154	3,077,468	8.65	740,537	4,742,889	5,425,881	10,168,771

Harnett, 1920	346,418	14,418,178	41.62	3,514,044	20,823,234	8,165,342	28,988,576
Haywood, 1919	321,154	3,037,607	9.45	1,779,507	6,120,975	2,762,717	8,883,692
Haywood, 1920	343,881	10,960,771	31.87	4,024,593	17,326,364	6,080,935	23,407,299
Henderson, 1919	199,895	2,150,723	10.86	1,862,495	4,173,152	1,881,099	6,054,251
Henderson, 1920	195,716	4,689,786	23.00	3,796,873	11,322,157	3,101,037	14,423,194
Hertford, 1919	204,576	2,118,831	10.36	629,451	2,840,986	3,090,703	5,931,869
Hertford, 1920	201,537	8,738,122	43.36	1,991,046	10,747,168	3,609,665	14,356,833
92 Hoke, 1919	224,703	2,129,757	9.48	300,364	2,653,091	2,020,935	4,674,026
Hoke, 1920	221,230	9,967,450	45.05	944,313	11,244,263	2,995,910	14,240,173
Hyde, 1919	275,961	1,540,190	5.58	40,230	1,619,250	1,071,108	2,690,358
Hyde, 1920	420,604	11,837,110	28.14	443,911	12,281,021	2,035,801	14,316,822
Iredell, 1919	363,920	3,754,812	10.32	2,726,620	7,376,308	6,785,263	14,161,571
Iredell, 1920	364,507	15,358,713	42.63	6,728,014	26,500,459	10,117,767	36,618,226
Jackson, 1919	291,748	1,555,849	5.33	188,013	2,168,624	1,993,645	4,162,269
Jackson, 1920	319,180	6,068,768	19.01	222,843	6,608,611	3,149,193	9,757,804
Johnston, 1919	481,735	5,092,429	10.57	1,973,354	7,912,383	10,322,128	18,234,511
Johnston, 1920	498,946	32,620,897	65.38	7,092,072	42,030,148	15,477,315	57,507,463
Jones, 1919	291,477	1,666,958	5.72	260,788	1,969,921	1,378,496	3,348,417
Jones, 1920	294,634	7,585,777	25.75	712,063	8,447,840	2,255,143	10,702,983
Lee, 1919	155,733	1,467,390	9.42	926,313	2,735,378	2,144,202	4,679,580
Lee, 1920	163,139	6,712,698	41.15	1,019,819	8,706,469	3,371,944	12,078,413
Lenoir, 1919	222,375	2,205,289	9.92	2,329,826	4,859,933	5,518,123	10,378,056
Lenoir, 1920	239,868	20,753,505	86.52	11,629,585	33,857,010	10,910,400	44,767,410
Lincoln, 1919	179,225	2,119,195	11.82	586,071	3,446,982	4,256,437	7,703,419
Lincoln, 1920	193,391	7,504,532	38.80	2,009,709	12,584,088	5,417,219	18,001,307
Macon, 1919	260,925	1,490,137	5.71	406,713	2,006,353	1,293,125	3,299,478
Macon, 1920	275,716	5,011,838	18.18	189,631	5,201,469	1,330,869	6,532,338
Madison, 1919	262,922	2,108,634	8.02	392,267	3,241,392	2,617,167	5,858,559
Madison, 1920	278,933	7,576,333	27.16	791,445	8,367,778	2,775,922	11,143,700
Martin, 1919	267,953	2,956,812	11.13	941,390	4,116,229	4,768,842	8,885,071
Martin, 1920	287,276	12,848,746	44.72	2,699,065	15,613,311	6,799,760	22,413,071
McDowell, 1919	254,751	.....	....	.....	2,675,983	1,042,136	3,718,119
McDowell, 1920	241,210	2,814,834	11.67	1,540,981	8,139,746	3,861,589	12,001,335
Mecklenburg, 1919	313,806	4,032,705	12.85	13,112,770	23,133,825	15,082,064	38,217,889
Mecklenburg, 1920	314,277	14,423,868	67.31	56,054,830	93,500,878	33,585,655	127,086,533
Mitchell, 1919	128,935	718,301	5.57	76,756	795,057	650,049	1,445,106
Mitchell, 1920	138,372	4,027,771	29.11	278,203	4,340,208	1,133,117	5,473,325

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

	Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
	Montgomery, 1919...	288,986	1,766,532	6.11	629,642	2,858,839	2,478,702	5,337,541
93	Montgomery, 1920...	289,109	5,090,834	17.60	1,738,731	6,830,165	3,091,370	9,921,535
	Moore, 1919.....	415,165	3,178,355	7.65	1,871,452	5,434,221	3,005,237	8,439,458
	Moore, 1920.....	401,486	8,004,405	19.93	5,240,261	15,604,749	5,224,372	20,829,121
	Nash, 1919.....	335,415	3,878,799	11.50	3,219,117	7,865,680	8,391,768	16,257,448
	Nash, 1920.....	323,886	20,867,100	67.82	9,818,482	36,300,096	12,130,528	48,430,624
	New Hanover, 1919.....	92,962	2,100,440	22.59	10,087,280	14,941,453	5,406,709	20,348,162
	New Hanover, 1920.....	114,132	3,171,311	28.05	14,309,005	37,517,377	12,528,021	50,045,398
	Northampton, 1919.....	318,278	3,705,130	11.64	623,790	4,463,235	4,436,914	8,900,149
	Northampton, 1920.....	331,152	11,257,234	33.99	1,110,300	12,367,534	4,772,232	17,139,766
	Onslow, 1919.....	342,132	2,846,648	8.32	489,741	4,772,360	2,651,357	7,423,717
	Onslow, 1920.....	416,808	7,308,697	20.69	992,565	10,807,997	2,756,647	13,564,644
	Orange, 1919.....	241,018	1,951,875	7.78	1,051,230	3,916,209	3,078,757	6,994,966
	Orange, 1920.....	244,404	7,866,281	32.19	2,219,764	10,086,045	6,222,234	16,308,279
	Pamlico, 1919.....	197,344	1,291,248	6.51	217,596	1,519,204	832,713	2,351,917
	Pamlico, 1920.....	190,034	4,008,264	21.09	457,130	5,546,213	1,410,210	6,956,423
	Pasquotank, 1919.....	148,427	1,678,547	11.31	2,136,000	4,120,322	2,922,259	7,042,581
	Pasquotank, 1920.....	137,882	5,016,537	33.04	2,984,095	13,421,447	5,980,231	19,401,678
	Pender, 1919.....	309,026	1,801,116	5.83	241,571	2,219,798	1,616,117	3,835,915
	Pender, 1920.....	451,802	7,307,962	16.17	633,713	8,492,798	2,019,023	10,511,821
	Perquimans, 1919.....	151,630	1,431,991	9.44	473,929	2,009,068	1,684,783	3,693,851
	Perquimans, 1920.....	135,126	4,579,632	33.89	1,035,330	5,739,609	2,359,005	8,098,714
	Person, 1919.....	248,726	1,907,348	7.67	491,389	2,633,069	2,368,806	5,001,875
	Person, 1920.....	254,630	10,097,690	39.65	1,751,638	12,452,278	3,624,517	16,076,795
	Pitt, 1919.....	377,008	4,386,655	11.64	2,896,842	7,464,487	8,655,875	16,120,362
	Pitt, 1920.....	395,113	33,378,935	87.54	10,810,632	44,254,598	17,617,391	61,871,989
	Polk, 1919.....	131,161	1,031,414	7.86	630,604	1,662,018	759,328	2,421,346
	Polk, 1920.....	130,925	3,221,231	24.61	403,878	5,043,541	3,691,363	8,734,904

Randolph, 1919	450,446	3,426,965	7.61	1,189,826	5,390,639	4,514,894	9,905,333
Randolph, 1920	489,717	13,352,406	27.27	2,842,531	18,468,305	7,049,532	25,517,837
Richmond, 1919	271,037	1,733,510	6.39	1,610,266	5,067,210	3,581,552	8,648,762
Richmond, 1920	298,155	8,335,941	28.63	5,335,137	18,450,390	8,000,022	26,450,412
Robeson, 1919	508,290	5,661,400	11.14	2,326,580	9,063,675	8,063,294	17,126,969
Robeson, 1920	544,258	41,507,181	76.23	3,410,336	48,024,939	16,401,672	64,426,611
Rockingham, 1919	345,078	3,213,287	9.08	2,215,162	8,399,673	7,917,904	16,317,477
Rockingham, 1920	354,743	20,502,620	57.79	17,139,898	47,813,378	24,561,986	72,375,364
Rowan, 1919	315,694	3,506,437	11.11	4,975,488	9,727,065	6,753,857	16,480,922
Rowan, 1920	319,701	14,383,945	46.00	14,703,488	38,548,806	8,802,070	47,350,876
Rutherford, 1919	323,305	2,660,608	8.23	635,344	4,331,111	3,204,275	7,535,386
Rutherford, 1920	326,699	12,869,438	39.33	717,300	19,912,642	8,824,619	28,737,261
Sampson, 1919	530,046	3,850,395	7.26	678,681	4,539,778	4,864,205	9,403,983
Sampson, 1920	578,092	16,169,478	28.00	2,181,805	22,717,990	9,305,331	32,023,240
Scotland, 1919	190,468	2,194,402	11.52	708,682	3,661,138	2,732,179	6,393,317
Scotland, 1920	190,381	15,478,175	81.30	3,520,521	21,319,716	7,693,755	29,013,471
Stanly, 1919	228,929	1,794,885	7.84	1,109,296	4,727,603	3,983,469	8,711,172
94 Stanly, 1920	245,668	10,574,057	43.04	3,745,636	21,225,000	10,608,893	31,833,893
Stokes, 1919	274,915	2,364,379	8.60	212,216	2,618,965	3,512,301	6,131,266
Stokes, 1920	286,724	10,328,827	36.02	544,334	10,873,161	4,310,595	15,183,756
Surry, 1919	330,406	3,850,503	11.65	1,737,885	5,796,250	5,375,888	11,172,138
Surry, 1920	347,849	13,476,044	38.72	5,053,375	18,529,419	7,845,186	26,374,605
Swain, 1919	346,039	2,275,531	6.56	348,794	2,657,925	1,908,527	4,566,452
Swain, 1920	346,196	6,057,460	17.49	596,960	6,830,920	2,619,045	9,449,965
Transylvania, 1919	197,595	1,518,091	7.68	382,984	2,044,250	1,308,115	3,352,365
Transylvania, 1920	198,554	4,684,341	23.59	462,625	5,304,466	2,597,049	7,901,515
Tyrrell, 1919	192,927	974,680	5.05	117,342	1,105,114	645,502	1,750,616
Tyrrell, 1920	169,491	2,917,151	17.21	235,845	3,152,996	1,069,834	4,222,830
Union, 1919	389,203	2,975,210	7.65	1,714,833	5,092,979	6,205,125	11,298,104
Union, 1920	392,429	15,605,830	39.77	4,671,356	21,444,971	10,172,675	31,617,646
Vance, 1919	161,724	2,103,131	13.00	1,776,205	4,550,421	5,579,175	10,121,596
Vance, 1920	167,208	9,428,756	56.39	5,553,505	17,856,566	8,662,735	26,519,301
Wake, 1919	531,678	5,703,809	10.73	11,038,122	19,342,872	12,302,850	31,645,722
Wake, 1920	506,877	23,181,356	45.73	25,987,726	53,739,885	18,726,589	73,900,221
Warren, 1919	255,618	2,568,511	10.49	875,602	3,556,222	3,828,467	7,384,689
Warren, 1920	277,193	10,277,899	36.89	1,926,632	12,373,446	4,851,406	17,224,852
Washington, 1919	200,868	1,586,739	7.90	501,569	2,180,780	1,556,516	3,737,296

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Washington, 1920.....	136,375	6,118,254	26.88	1,010,540	7,468,873	2,231,456	9,700,329
Watauga, 1919.....	207,881	1,632,998	7.85	140,420	1,773,418	1,938,899	3,712,317
Watauga, 1920.....	217,097	6,750,358	31.09	501,234	8,820,897	2,419,708	11,240,605
Wayne, 1919.....	340,735	3,771,064	11.07	4,026,567	8,449,151	9,173,853	17,623,004
Wayne, 1920.....	339,270	27,607,644	81.37	14,860,093	47,323,132	17,666,582	64,989,714
Wilkes, 1919.....	467,528	2,991,286	6.40	668,155	3,780,058	3,014,511	6,794,569
Wilkes, 1920.....	469,130	7,999,140	17.05	880,767	12,352,008	4,357,959	16,709,962
Wilson, 1919.....	223,631	2,866,661	12.82	3,109,243	6,323,509	9,005,000	15,328,509
Wilson, 1920.....	236,077	26,715,771	113.17	13,685,529	40,401,300	20,069,562	60,470,862
Yadkin, 1919.....	211,977	1,999,500	9.43	218,745	2,233,845	1,926,589	4,160,434
Yadkin, 1920.....	212,459	8,992,113	42.32	659,503	9,651,616	2,772,947	12,424,563
Yancey, 1919.....	174,935	1,142,880	6.53	83,079	1,335,074	1,204,819	2,539,893
Yancey, 1920.....	184,300	6,981,404	37.88	126,724	7,144,065	2,583,189	9,727,254

95 *Consent Decree.*

Filed Oct. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The following stipulation is entered into between counsel for Plaintiff and the Attorney General of North Carolina and his associates as counsel for all defendants, for each of which defendants they have entered an appearance.

It is agreed that in order that the defendants may have sufficient time in which to prepare the defense, the application for an interlocutory injunction under Section 266 of the Judicial Code is, with the consent of Court, continued until such date as the Court may select following January 1, 1922.

The foregoing continuance being agreed upon and it appearing that before the hearing and determination of the application certain taxes will come due to the State of North Carolina and to the counties, cities, towns and other taxing districts; Therefore it is agreed by the Attorney General of North Carolina and his associates as representing all of the defendants, that if the Southern Railway Company pays the taxes it agrees hereinafter to pay, then no further or other taxes sought to be enjoined in the bill will be demanded or collected or any action or suit of any character begun to collect or any penalty assessed for the non-payment thereof, until the further order of the Court or pending this action.

The Southern Railway Company agrees that it will pay when due in accordance with the laws of the State of North Carolina to all counties, cities or towns, special school districts, or other special taxing districts all taxes that may be due such county, city, special school or other special taxing districts of the State, on its proper proportionate share of an aggregate ad valorem assessment against plaintiff of sixty million dollars.

The Attorney General of North Carolina agrees that he will take all necessary action to have the Commissioner of Revenue certify to the several counties and taxing districts of North Carolina their proper proportion of an assessment of 60 million dollars as soon after the date hereof as may be practicable and, if possible, within such period as will enable the Railway Company to take advantage of any discount that it may be entitled to under the law.

It is agreed between the parties that the Southern Railway Company is not to demand a receipt in full for its 1921 taxes in consideration of the payment it makes, but is to receive a receipt for the amount of the taxes paid, and the amount of taxes so paid shall be in full of said taxes due if an assessment shall be finally fixed at a sum not in excess of sixty million dollars, or such payment shall be a credit upon all taxes that may be due if the assessment of
96 plaintiff's property for ad valorem tax purposes for the year 1921 shall be finally fixed in excess of said sixty million dollars.

It is further agreed that if defendants desire to file an answer prior to the hearing of the application for an interlocutory injunction they shall file such answer or any motion or other pleading they desire to file by December 1, 1921, and furnish opposing Counsel with copies thereof. Plaintiff shall have until December 24th, 1921, to file any motion or reply pleading and any affidavits in support of bill or motion for interlocutory injunction or in reply and furnish opposing Counsel with copies thereof. Defendants shall have until January 10, 1922, to file affidavits in support of their answer or in reply and plaintiff shall have until hearing to file reply affidavits.

This stipulation to become effective and filed in this Court upon approval hereof by the Court.

At Greensboro, N. C., this 6th day of October, 1921.

S. R. PRINCE,
MANLY, HENDREN & WOMBLE,
A. B. ANDREWS,
Attys. for Plaintiff.
JAS. S. MANNING,
Attorney General of No. Ca.;
GEO. H. BROWN,
WM. P. BYNUM,
KING, SAPP & KING,
Counsel for Defendants.

Approved Oct. 6, 1921.
EDMUND WADDILL, JR.,
U. S. Circuit Judge.
JAS. E. BOYD,
H. G. CONNOR,
U. S. District Judges.

97 In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al

Affidavits in Support of Plaintiff's Application for Interlocutory Injunction.

Filed Dec. 24, 1921.

S. R. Prince,
Solicitor for Plaintiff.
L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
Of Counsel.

98 *Affidavit of R. Murray Hubbard.*

Filed Dec. 24, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Affidavit of Murray R. Hubbard in Support of Plaintiff's Application for Interlocutory Injunction.

STATE OF GEORGIA,
County of Calhoun:

Murray R. Hubbard, being first duly sworn, says:

That from 1900 to 1904 he was Secretary of the Kentucky Railroad Commission and from 1904 to date has been con-
98½ tinuously in the service of either the Southern Railway Company or its affiliated lines or the United States Railroad Ad-

ministration, his duties being to return for taxation the property of the Southern Railway Company and its affiliated lines in the several states traversed by them and to appear before the tax boards of the several states in the manner of the assessment thereof. At the present time he is Tax Commissioner of Southern Railway Company and resides at Atlanta, Georgia.

That under the Revaluation Act of North Carolina, approved March 11, 1919, the property of every citizen of the State was to be valued at its true value in money, and in accordance with Section 31 of said Act there was to be made a complete revaluation of the property of railroads. The Tax Commission made a tentative assessment for 1920 of Southern Railway's properties, the Southern Railway Company excepted thereto, and at the hearing affiant proved that the net earnings of Southern Railway Company for the System as a whole showed an average for the five years of $21,889,648.00, which sum, capitalized at 7%, showed a valuation for the System of $312,709,260.00 and a valuation for North Carolina of $68,170,618.00 under the gross earnings ratio of 21.8%. Affiant also proved the total par value of the outstanding stocks and bonds of Southern Railway Company and offered to agree with said Tax Commission upon the fair market value of said stocks and bonds, if the
99 Commission should desire to make the assessment under that plan. Affiant proved the amount of gross revenue and operating expenses allocated to the State of North Carolina for the five year period 1919-1915 and also the amount of taxes paid in said State, and that the average annual net earnings so arrived at during said five year period were $6,117,625.00, but affiant made proof in connection therewith of the fact that operating expenses so allocated to North Carolina were understated and that the average net earnings of $6,117,625.00 was not a fair basis for valuation of the property in North Carolina and gave at length the reasons therefor, which reasons are briefly those set out in the bill filed herein. Affiant further offered proof that the annual return upon capital invested in banking, merchandise, and other enterprises in North Carolina was at least 8%; that no railroad securities yielding 6% were at the time selling for their par value in the market; that railroads enjoying the highest credit of any in the country including Southern Railway Company were paying as much as 7½% for money, and that these facts should be considered by the Commission in determining what was a fair percentage of capitalization. The Tax Commission concluded to use a plan of capitalizing the net earnings in order to arrive at the true value in money of the property of Southern Railway Company in North Carolina and at first found a value, arrived at by capitalizing at 7% North Carolina net operating reve-
100 nue for years 1919-1915 without making deduction for taxes paid in the State of North Carolina, which, for the year 1919, amounted to more than nine hundred twenty-two thousand dollars. The value thus arrived at was $103,730,071.00, but affiant protested so vigorously against the failure to make a deduction of the amount of taxes paid that the Tax Commission thereafter changed its plan and arrived at the assessment of $101,960,400.00 by capitalizing the

average net earnings in North Carolina for the five years 1919-1915, amounting to $6,117,625.00, but changed the percentage of capitalization to 6% instead of 7% which had been used before deducting taxes. That said sum, $101,960,400.00 was determined by the Tax Commission to be the true value in money of the property in North Carolina of Southern Railway Company and the independently operated lines, Atlantic & Yakdin Railway Company, High Point, Randleman, Asheboro & Southern Railroad Company and Yadkin Railroad Company, and from said sum of $101,960,413.00 the Tax Commission fixed and deducted a valuation of $4,104,710.00 for the Atlantic and Yadkin Railway Company; of $688,895.00 for the High Point, Randleman, Asheboro and Southern Railroad Company; and of $561,114.00 for the Yadkin Railroad Company, after which deductions it found the valuation of Southern Railway Company to be $96,605,694.00. Affiant says that said valuation of $96,605,694.00 finally adopted was not reduced at all from a figure in excess of $100,000,000.00 by a due consideration of the capitali-
101 zation of plaintiff's net income for the State of North Carolina at 6 per cent, nor of the market value of the plaintiff's stocks and bonds and other securities. Affiant says that said Tax Commission did nothing other than to find that $6,117,625.00 was average net earnings allocated to North Carolina for the five years 1919-1915; that 6% was the figure for capitalization, and that a 6% capitalization of $6,117,625.00 showed for North Carolina a valuation of $101,960,413.00 for Southern and the other lines before mentioned, and then fixed the respective valuations set out for each of said railroads, of which total valuation the value of the Southern was found to be $96,605,694.00. Notwithstanding the proof above set forth and with no proof to the contrary before the Commission, it adhered to its assessment of $96,605,694.00, upon which amount affiant thereafter paid taxes for the year 1920; said payments were made under protest.

That the Commissioner of Revenue of the State of North Carolina on June 21, 1921, heard the application of affiant for a review of Southern Railway's 1921 assessment. At this hearing affiant made proof as follows:

(1) As to error of method used in 1920 by the State Tax Commission in fixing the value of its property at $96,605,694.00, as set forth above.

(2) That 6%, the figure used for capitalization of net income, was too low.

(3) That the market values of railroad securities in 1921
102 were materially less than on May 1, 1919. That the cost of materials used generally in railroad construction was much less in 1921 than in 1920 or at May 1, 1919.

(4) That the average net income allocated to North Carolina should not be used for capitalization in order to determine the value of the property in the State because in said allocation under exist-

ing methods the operating expenses were understated, with the result that net income was overstated.

(5) That the average annual net income of Southern Railway Company as a whole for the five year period 1920-1916 was $21,274,027.89. That the true value in money of the property could be fairly ascertained by capitalizing the aforesaid sum at 8% or certainly at not less than 7% and then apportioning to North Carolina either a road mileage or gross earnings proportion of the amount thus ascertained to be the true value in money of the property in all states. That the values thus ascertained for the system as a whole were as follows:

Capitalization at 8%	$265,925,349.00
Capitalization at 7%	303,914,684.00

And that the true value in money of the property in North Carolina thus ascertained would be as follows:

103 Eight per cent capitalization—

On road mileage basis 20.1%	$53,450,995.00
On gross earnings basis 22%	58,503,577.00

Seven per cent capitalization—

On road mileage basis 20.1%	$61,086,851.00
On gross earnings basis 22%	66,861,230.00

(6) That the application of plaintiff, dated May 24, 1921, to the Commissioner of Revenue for a review and reduction of the aforesaid assessment of $101,964,013.00 (of which total the valuation of Southern was $96,605,694.00) stated the affiant's belief that on May 1, 1921, the value of the Southern's owned, leased, and operated lines in North Carolina (which included the Atlantic & Yadkin Railway, High Point, Randleman, Asheboro & Southern Railroad, and the Yadkin Railroad) was $68,170,618.00. That at the hearing of said application before the Commissioner of Revenue on June 21, 1921, affiant explained to said Commissioner that the valuation of $68,170,618.00 was determined by capitalizing net earnings for the years 1919-15, which were the only figures available to him upon May 24, 1921. That upon June 21, 1921, the net earnings for the years 1920-16 were known to affiant to be $21,274,027.89, and that affiant then believed and stated the highest true value which reasonably could be fixed for the Southern and aforesaid railroads in North Carolina was $66,861,230.00, as before set
104 out. Affiant states further that at the time of such presentation to the Commissioner of Revenue the tentative value of the property of Southern Railway made by the Interstate Commerce Commission, as set forth in the bill on pages 24 and 25 was not known to him.

Affiant says that under date of July 21, 1921, the Commissioner of Revenue advised him by letter that he had arrived at a value of

the Southern Railway's properties of $102,504,843.00. That value included other independently operated lines, which being deducted, left as a value of the Southern Railway's property in North Carolina the sum of $96,605,694.00 which said value was further reduced by reductions in real estate off the main right of way to the final figure of $96,306,357.00. Affiant gave notice to the Commissioner of Revenue of an appeal to the State Board of Equalization. He was thereafter advised that the law did not permit a hearing by the State Board of Equalization and the matter was reheard by the Commissioner of Revenue and again proof was offered on the various points above set forth to show the excessive valuation of Southern Railway's property. On August 31, 1921, the Commissioner of Revenue advised affiant that the apportionment of the assessment to Southern Railway Company in North Carolina amounted to $96,306,357.00. The Commissioner of Revenue has not advised affiant of what part of the above total is the physical or tangible property and what part the franchise, but affiant was advised by the
105 tax officer of another railroad in North Carolina that the Tax Commission had in response to an inquiry from him advised him that the Southern's tangible assessment for 1920 was $78,778,169.00 and intangible, $17,528,188.00.

That in those states in which affiant appears before the State Tax Boards in which the capitalization of net income plan is used to ascertain the value of the property, the percentage figures used by assessing boards in recent years have been as follows:

Georgia	8 %
Alabama	8 %
Mississippi	8 %
Louisiana	8 %
Tennessee	10 %
Kentucky	7 %
Ohio	8½%
Indiana	8 %

Affiant says that the total taxes paid by Southern Railway Company in the State of North Carolina for state, county, and municipal purposes for 1920 were $874,888.73, and if the present assessment remains, then, due to increased county rates, he estimates the actual tax to be paid will exceed one million dollars.

Affiant further says that in several of the states traversed by Southern Railway ad valorem taxes are paid upon the full value of the property, tangible and intangible, but in no one of said states
106 is a franchise or privilege tax paid based on the valuation upon which ad valorem taxes are paid. That the method used for ascertainment of the value of franchise or intangible property is to deduct the assessed value of the tangible property from the amount determined to be the total value of the property within the state and the remainder is the intangible value.

That under date of September 22, 1921, Honorable Baxter Durham, State Auditor, certified to Southern Railway Company the

franchise or privilege tax assessed under the provisions of Section 82 (6½) of the Revenue Laws, Chapter 34, North Carolina Public Laws of 1921, in the aggregate amount of $96,306.35.

Affiant says it is true, as stated in the answer, that plaintiff's mileage in North Carolina of first Main Line is 1,093.02; of Second Main Line, 175.74; and of Side and Yard Tracks, 373.04; and of all Tracks, 1,641.80. Affiant also says that in all states First Main Line operated is 6,971.08; Second Main Line, 726.04; Side and Yard Tracks, 2,307.49; and of all Tracks, 10,004.61. That if All Track Miles are to be used as a proper basis for distribution, and Atlantic Coast Line Trackage in North Caroline (121.46) also is to be considered, then the percentage applicable to North Carolina would be 17.62%. Affiant says it is also true, as stated in the answer, that neither the mileage of 1,093.02, First Main, nor of 1,641.80, All Tracks, includes independent lines in North Carolina, con-
107 trolled by ownership of stock, and that the North Carolina mileage of said railroads is First Main, 357.43; Second Main, none; Side and Yard Tracks, 65.19; Total All Tracks, 422.62, addition of which would make total mileage in North Carolina of railroad owned, operated, leased and controlled of First Main, 1,571.91; of Second Main, 175.74; of Side and Yard Tracks, 438.23; and of All Tracks, 2,185.88, (which figures include Atlantic Coast Line Trackage Rights in North Carolina over 121.46 miles). Affiant says if railroads in North Carolina, controlled by ownership of stock, are to be considered, then it is also proper to include and consider the mileage of railroads so controlled in all other states, which are as follows: First Main, 3,084.67; Second Main, 257.22; Side and Yard Tracks, 1,137.12; All Tracks, 4,479.01, and that the comparative showing thereof as to controlled lines only would be:

	1st main.	2nd main.	Side & yard.	All tracks.
Other States ...	3,084.67	257.22	1,137.12	4,479.01
N. Carolina	357.43	.....	65.19	422.62
Total ...	3,442.10	257.22	1,202.31	4,901.63
N. C. Proportion	10.38%	0%	5.42%	8.62%

Affiant further says that if the mileages of plaintiff in North Carolina and in other states, and of plaintiff's controlled lines in North Carolina and in other states should be considered and all consolidated the comparative showing thereof would be as follows:

	1st main.	2nd main.	Side & yard.	All tracks.
All States	10,413.18	983.26	3,509.80	14,906.24
N. Carolina ..	1,571.91	175.74	438.23	2,185.88
N. C. Proportion	15.10%	17.87%	12.49%	14.66%

108 Affiant further says that these comparative showings absolutely refute the statement in the answer that the use of plaintiff's First Main Track in North Carolina (1,093 miles) for allocating values to that state is unfair. Affiant says it is the general custom in other states, where second, side and yard tracks are not separately assessed, to use first main line mileage as a basis for allocating values. And affiant says the comparative statements before set out are only mileage figures whereas, if bases other than mileage were used, the favor shown North Carolina by exclusion of controlled lines would be more apparent.

Affiant says that the action of the Tax Commission in 1920 did not indicate that any consideration whatever was given to character of plaintiff's roadbed, fixed equipment, miles of double track, or any other factor except plaintiff's gross and net earnings allocated to North Carolina; that affiant offered proof to said Tax Commission in 1920 and to the Commissioner of Revenue in 1921 that plaintiff's operating expenses in North Carolina were not and could not be kept with mathematical accuracy, and were understated. But that notwithstanding said evidence and without regard for other factors set out in the answer the Tax Commission arrived at a tentative valuation in North Carolina by capitalizing at 7% (without deducting taxes paid in North Carolina) average net earnings of four years, 1919-1916, of $7,261,105.59, or a tentative valuation of $103,730,-071.00. And that said Commission arrived at its final valu-
109 ation by capitalizing at 6% average net earnings of five years, 1919-1915, of $6,117,624.75, or a final valuation of $101,960,-413.00 as before set out herein.

Affiant says that not only would capitalization of net earnings in all states not result in the exportation of tax values from North Carolina but that method would result in the importation of tax values to North Carolina unless due consideration were given to the fact that plaintiff owns and operates large and costly terminals and yards at such points as Alexandria, Va., Norfolk, Va., Charleston, S. C., Atlanta, Ga., Knoxville, Chattanooga and Memphis, Tenn., Birmingham, Ala., and E. St. Louis, Ill.

Affiant says plaintiff owns no tracks in Florida, as referred to in the answer, but operates into Jacksonville over Atlantic Coast Line tracks and pays taxes in that state only upon assessment on rolling stock of about $70,000.00.

Affiant says that the statement in the answer, in the last paragraph on page 18, that real estate was raised by revaluation in 1920 three times and railroad property twice their former assessments is substantially correct.

That on Aug. 10, 1920, the State Tax Commission made its report on revaluation to His Excellency T. W. Bickett, Governor of North Carolina, in which on page 5 appears the following:

110 "Valuation of Railroads.

One frequent criticism has been that the valuation of railroad properties could not be increased, it being understood that they were as-

sessed at full value before. Our report shows that railroad properties have been increased from $125,417,618 to $250,537,158, or more than doubled. Under the new Interstate Commerce Act the Interstate Commerce Commission is required to make rates that will yield an average return of not less than five and one half per cent upon the railroad lines as a whole, and to find the fair value of these properties as the basis for making the new rates. That Commission has not yet determined the basis on which the value of the railroad lines will be finally fixed. It will take several years to complete the physical valuation of all of these properties. Pending this final valuation the railroad lines have submitted to the Interstate Commerce Commission what is known as their investment accounts and have asked that this basis of value be used for determining the scales of rates and amount of return they are entitled to earn on their properties. It seems clear to us that the time has come when the value upon which a railroad or public utility is permitted to earn a return in the value upon which it should pay taxes to this State. In either case the purpose is to find the fair value of the property. So that generally our valuation of the railroad lines in this State is based upon a mileage proportion of their investment account, which they have asked the Interstate Commerce Commission to adopt as the basis for
111 making their rates, and to this mileage proportion we have added the value which we find to represent the intangible value of their North Carolina lines, based upon the volume of business in this State greater than the average volume of traffic on their lines as a whole. * * * The new assessment of railroads does not represent as great an increase as the average increase of other property, for the reason that they were assessed relatively higher than other property before, but we anticipate that it will meet the fair demands of public opinion when it is known that they are assessed like other property at their full value, and upon a valuation quite as high as that upon which they are asking to be permitted to earn a return."

Said Commission also reported as to "Real Estate Values" on page 4 of said report as follows:

"So that values as of May 1, 1919, became relatively conservative values, and we know by numerous tests that generally valuations have been conservatively made as of that date.

The increase in real estate values is large, but when subjected to any reasonable test they are shown to be conservative. In this connection it is interesting to note the increase in the total value of farm products produced in this State since 1915, when real estate was last valued:

Total value farm products, 1915	$197,185,000
Total value farm products, 1919	683,168,000."

112 Said Commission later on Dec. 31, 1920, made another report to the Governor which among other things and under "Real Estate Values," page VII, was as follows:

"They were made with reference to actual value on May 1, 1919, and under instructions to use such values with reference to that date as were deemed to be stable. The peak of speculative values in lands was reached in the fall of 1919, after the tobacco and cotton markets for that season developed unprecedently high prices for these products, and continued into the first half of 1920. The United States Department of Agriculture makes an annual appraisal of the average value of farm lands in all states. Their estimate of 1919 average value for this State was $47.00 per acre; for 1920, $75.00 per acre. The revaluation average was $38.94, or $8.00 per acre less than the 1919 average. This demonstrates that the revaluation values did not approximate the peak of speculative values. We should be equally cautious to avoid the other extreme of basing values for the future upon a congestion that has temporarily almost destroyed the market for real property."

Affiant further says it is not true, as stated in paragraph 2 on page 24 of the answer, that the Interstate Commerce Commission has fixed rates for plaintiff upon a basis which shows for plaintiff property values in North Carolina of $111,308,323.00. Affiant also
113 says that in the action of the Interstate Commerce Commission referred to no property value of any interstate railroad was allocated to any state, nor has it even appeared that any certain value was assigned to any one railroad but that a lump sum valuation was arrived at for all railroads.

Affiant is so informed and believes it to be true that the records in the office of the North Carolina Commissioner of Revenue show that the Interstate Commerce Commission has found the reproduction cost, less depreciation, of the entire property in Virginia and North Carolina of Norfolk Southern Railroad to be $26,028,366. That the total mileage of Norfolk Southern is 900.543, of which 790.264 miles, or 87.754%, are in North Carolina. That the assessment fixed in 1921 for Norfolk Southern by the Commissioner of Revenue is $22,840,932, or 87.754% of the Interstate Commerce Commission valuation of $26,028,366 before set out.

Affiant is informed and believes it to be true that the records in the office of the North Carolina Corporation Commission show that the Interstate Commerce Commission has found the reproduction cost, less depreciation, of Winston-Salem Southbound Railway (all in North Carolina) to be $4,753,006 and the value of its land to be $378,088, an aggregate of $5,131,094. That the valuation of said railway by the Commissioner of Revenue in 1921 is fixed
114 at $4,792,120, or $238,974 less than the Interstate Commerce Commission valuation before set out.

(Signed) MURRAY R. HUBBARD.

Subscribed and sworn to before me this 19th day of December, 1921.

(Signed) J. W. SMITH,
Notary Public, Fulton County, Ga.,
Notary Public, State at Large, Georgia.

My Commission Expires Oct. 5, 1923.

115 *Affidavit of A. H. Plant in Support of Plaintiff's Application for Interlocutory Injunction.*

Filed Dec. 24, 1921.

DISTRICT OF COLUMBIA,
City of Washington:

Personally appeared before me, a Notary Public in and for the District of Columbia, City of Washington, A. H. Plant, a resident of the aforesaid District and City, who, upon being duly sworn, deposes and says that:

(1) He now is and since March 1, 1920, has been assistant to President of Southern Railway Company. From January 1, 1898, to June, 1918, he was the executive accounting officer of Southern Railway Company. From June, 1918, to February 29, 1920, he was Federal Auditor for the United States Railroad Administration and as such directed the accounting for operations of Southern Railway Company's properties which, during that period, were operated by the United States Railroad Administration.

(2) As such executive accounting officer of Southern Railway Company, he formulated and prescribed the accounting methods of the said Railway Company and directed and supervised its accounts in accordance with such methods as were formulated and prescribed by him.

116 (3) Briefly stated, the methods prescribed by him for apportioning results of operations to such individual States were as follows:

(*a*) Revenues:

One hundred per cent of freight and passenger revenues accruing on traffic having both origin and destination within a State (known as intrastate traffic) and one hundred per cent of all miscellaneous revenues earned within a State, such as switching, demurrage, car service, storage and other similar items, are allocated to the State in which they are earned.

Revenues from freight and passenger traffic, having either origin or destination within one State (known as interstate traffic), and revenues from freight and passenger traffic which have origin or destination within one State, but which pass in whole or in part through such State, also known as interstate traffic, but more spe-

cifically classified herein as trans-state traffic, are allocated to the States within which such traffic moves on basis of miles traveled by such traffic.

No deductions, adjustments or allowances are made in such allocations for assembling, handling, loading, unloading and other terminal costs incident to the handling of trans-state traffic.

(*b*) One hundred per cent of the maintenance and trans-
117 portation costs incurred within the borders of an individual State are allocated to such State. No additions to or adjustments of such costs so allocated to an individual State are made to equalize or adjust assembling, handling, loading, unloading and other terminal costs incurred in receiving and discharging trans-state traffic.

(4) Deponent states that he realized some years ago and now realizes that the results or the net revenue produced for the State of North Carolina under the accounting formulæ for allocating revenues and operating costs to States above described, were and now are erroneous and inequitable; that revenues allocated to each State, as revenues are allocated by Southern Railway Company's system of accounting, should be charged with appropriate proportions of all assembling, terminal and handling costs incurred without the State on trans-state traffic moved within a State.

(5) Deponent further states that realizing the existence of such errors and inequalities in the apportionment of revenues and operating costs to individual States, and also realizing that to correct such inequalities it would be necessary for the Railroad Commissions of each State throughout the country to mutually agree upon a uniform method of apportionment, he brought the matter to the attention of the several State Commissions through a representative of the In-
terstate Commerce Commission, with a view to the promulga-
118 tion and adoption of a uniform plan of apportionment which would correct the inequalities then existing and which now exist in such apportionments.

Such inequalities and errors were recognized by representatives of both the Federal and State Commissions. The subject was thoroughly discussed and digested at various meetings of committees representing the three interests, i. e., the railroads, the State Commissions and the Federal Commission, the result of all of which was that no relief was given and no change has been made in the method of keeping such accounts.

(6) Deponent further states that in an analysis of operations of Southern Railway Company within the State of North Carolina, it was found by him that of the total traffic handled within the State during a given period, forty-three per cent of it originated without said State and had destinations beyond said State, and that while revenues on such trans-state traffic were apportioned to the State of North Carolina on a mileage basis without deductions or adjustments for terminal costs, such revenues so allocated to said State were not

charged with any part of the costs incurred in other States in assembling, handling, loading or unloading such traffic, or for costs incurred in maintaining the facilities in and by which such traffic was handled; and that by reason of the application of the accounting methods employed in the allocation of operating results to States, the operating costs allotted and reported to the State of North
119 Carolina are understated to the extent of said State's just and proper proportion of such terminal costs on at least forty-three per cent of the traffic transported within such State by Southern Railway Company.

(7) Deponent further states that it is not the practice of Southern Railway Company to make interdivisional charges for costs incurred by individual operating divisions in transporting company material for other operating divisions. The Southern Railway Company uses no fuel coal mined within the State of North Carolina. The coal consumed by it in said State is obtained in the Alabama, Tennessee and Virginia coal fields. No part of the costs to assemble it and to transport it to the North Carolina State Line is charged against the revenues allocated to the State of North Carolina, but such costs are allocated to the States in which the service is performed without corresponding revenues for such service. As a result, the coal carrying lines show either high operating cost ratios or costs in excess of revenues earned. As illustrations:

The line Birmingham to Atlanta, over which large quantities of coal are transported for Company use in Georgia, South and North Carolina, shows an operating ratio of 103.67 per cent for the year 1920. The line St. Charles to Bulls Gap, Tenn., another coal carrying line, shows an operating ratio of 114.30 per cent for the same period. The line from the Tennessee fields into Knoxville shows an operating ratio of 113.93 per cent for 1920. Each of these
120 three lines transport coal for use by the Company in operating its trains within the State of North Carolina and no part of the assembling, maintenance or transportation costs incident to the movement of such coal from the mines up to the North Carolina border line is charged against the revenues allocated to said State. The three lines mentioned are economically managed and operated. If they had received revenue credits for services performed for the North Carolina lines and for lines in other States, for which they transported locomotive and other operating coal, their operating cost ratios would have been substantially less and the costs thus lessened would properly be charged against the revenues allocated to the several States for which the service was performed. Therefore, the operating costs allocated to the State of North Carolina are understated to the extent of costs incident to the transportation of fuel coal used within that State from the mines to the State border.

(8) Deponent further states that those data reported in Southern Railway Company's quarterly reports to the Railroad Commission of the State of North Carolina, designated as "operating expenses" for another and additional reason do not truly or accurately reflect

the operating costs chargeable to revenues allocated to said State, such other and additional reason being:

The operating costs allocated to the State of North Carolina
121 and reported by Southern Railway Company include nothing for hire of equipment or joint facility rents, and to the extent of such accruals within said State, the operating results reflected by the said reports are either overstated or understated, as the case may be. It has been held by the Congress in the Transportation Act that credits or debits arising from such sources should be reckoned with in determining net operating income.

(9) Deponent further states that, based on his intimate knowledge of the operations of Southern Railway Company, as a whole and in the several States in which the Company transports traffic, the costs to earn a dollar of revenue within the State of North Carolina, if such revenues were charged with all proper costs incurred by the Company, would not be less than the costs to earn a dollar on the entire railway.

(10) Deponent further states that the five hundred and thirty-six million, to which defendants refer and of which he took a gross earnings proportion to arrive at a value in North Carolina of $111,308,323.00, includes investment in road and equipment, improvements on leased railway property, materials and supplies, and Government allocated equipment. It is proper to first deduct from the total the materials and supplies, because the materials and supplies which were on hand at the time the statements were rendered in July, 1920, were not correct as of May 1, 1921, and if it
122 is proper to include materials and supplies, the amount thereof on hand May 1, 1921, was very much less than in July, 1920. Furthermore, there was no allocation by the Railway Company of the total of its investment account to North Carolina or any other State. In addition to this, while the amount found by the Interstate Commerce Commission to be the value for rate making purposes of all the carriers in what was known as the Southern Group was 91.1 per cent of the total claimed by the Group, affiant avers, on information and belief, that it is not known to defendants how the 91.1 per cent was arrived at, and it may be that the Commission did not allow 91.1 per cent of the Southern's investment account and allowed more than 91.1 per cent of some other road's investment account in the Southern Group. In other words, the 91.1 per cent was a general average for the Southern Region and did not apply to any particular carrier in so far as the affiant is advised and believes. Affiant states that if it be considered proper to take the book investment, an illustration of the facts as applied to one line in the State of North Carolina will show the fallacy of so doing. The investment account of the North Carolina Railroad, as reported to the Interstate Commerce Commission was $4,975,628.00, whereas it is well known that said sum does not represent by half, the true value of said property.

(11) Deponent further states that it is a fact that the Commission, in its report on the values under Section 15(*a*) of the Interstate Act, used the language set forth in the answer at the top
123 of page 16, but the deduction therefrom, "The plaintiff contended that the actual value of property in North Carolina was in excess of one hundred and eleven million," is that of defendants and is not a fact. Furthermore, since the hearing in the case referred to, Ex Parte 74, was had, the Southern Railway has received from the Interstate Commerce Commission, a partial report on its valuation under Section 19(*a*) of the Interstate Act, and it is affiant's understanding that if such investigation under the valuation section of the Interstate Act had been complete, it would have been availed of by the Interstate Commission in making its finding on the valuation under Section 15(*a*), and inasmuch as the tentative value as promulgated by the Interstate Commission of affiant's road in the State of North Carolina is now as near completed as is set forth in complainant's bill on page 25, it does not seem proper to affiant, from an accounting standpoint, to use the general finding of the Commission for all roads in the Southern Group, rendered July 29, 1920.

(12) Deponent further states that the test period covered the three years ended June 30, 1917. The year ended June 30, 1915, was below normal. The year ended June 30, 1916, was normal. The year ended June 30, 1917, was above normal, and the average for the three years produced a normal return.

(13) Deponent further states that he has had prepared
124 under his supervision for the Interstate Commerce Commission, full statements and diagrams disclosing the results of the traffic conditions of the Southern Railway for the years 1920 and 1921, in connection with the advances heretofore allowed by the Interstate Commerce Commission in freight rates of 25 per cent and passenger rates of 20 per cent. The facts disclosed by affiant's investigation are that the actual traffic transported produced an increase in freight rates of only 20.53 per cent and that that amounted to an increase in gross revenue of only 1.99 per cent due to the falling off in the tonnage and due to the falling off in the higher classes of freight which paid the greater amount of revenue. For instance, the first group, which covered the farm products, fell off 28.67 per cent and the second group, which included tobacco, fell off 25.26 per cent, whereas the third and fourth groups fell off only 9.98 per cent and 16.05 per cent respectively, as compared with the average decline of 18.33 per cent, whereas the decline in the groups covering the major portion of farm products was 28.67 per cent.

Affiant is, therefore, able to state as a fact that the Southern Railway Company suffered very heavily from the decline in its tonnage and that the increase in freight rates did not offset the decline and did not approximately offset the increase in what might be considered normal expenses.

(Signed) A. H. PLANT.

Subscribed and sworn to before me this 19th day of December, 1921.

[SEAL.] (Signed) HARRY K. PIMPER,
Notary Public.

Affidavit of J. B. Duke in Support of Plaintiff's Application for Interlocutory Injunction.

Filed Dec. 24, 1921.

DISTRICT OF COLUMBIA,
City of Washington:

J. B. Duke, being first duly sworn, says:

That he has been connected with the Accounting Department of the Southern Railway Company since March, 1900, and is at this time the General Auditor of the Company, in charge of its books and accounts, which are under his immediate supervision and jurisdiction.

That the main lines of Southern Railway Company in the State of North Carolina constitute funnels through which pass a large volume of traffic originating and terminating without the State. The revenue allocated to North Carolina on this traffic is the mileage proportion of the revenue accruing to Southern Railway Company arrived at on basis of miles hauled in North Carolina compared to the total miles hauled by Southern Railway Company.

That in the allocation of expenses to the State there is charged to North Carolina as the cost for handling this traffic only the road haulage costs incurred within the State.

That this method does not charge to North Carolina the total expenses which should be charged against the revenue allocated on a mileage basis to the State, and, as a consequence, the net income in North Carolina has been overstated.

That Southern Railway Company is required by North Carolina to report the results of operation within the State and endeavored to keep its accounts and records so as to comply with this requirement. It has been recognized, however, that there are great difficulties involved in keeping the accounts in a manner that would reflect with accuracy the revenues and expenses or net income in any individual State.

That these difficulties are generally recognized and several years ago efforts were made to devise methods by which there could be equitably apportioned to each State a proper part of assembling, terminal or haulage costs incident to interstate and trans-state traffic. The effort to do this was spread over a period of years and a careful study of the subject was made co-operatively by representatives of the various State Commissions and representatives of the railways through a committee appointed for that purpose. The conclusion reached by these joint representatives was:

"Whereas, The Joint Committee composed of the Standing Committee on Uniform Railway Statistics of the Na-

tional Association of State Railroad Commissioners and a Sub-committee of the Committee on Corporate, Fiscal and General Accounts of the Association of American Railway Accounting Officers, have on several occasions in joint conference discussed the formulation of rules for the assignment of expenses, and revenues by State lines, and

"Whereas, As a result of these discussions, the Joint Committee is unanimously of opinion, in view of the great variety of practices on the part of carriers and of local conditions, it is not possible at this time to arrive at a satisfactory set of rules for the purpose named:

"Be It Resolved, By the Joint Committee, that it is not feasible at this time to attempt the formulation of such rules and that each association for whom the respective committees stand, be requested to report this conclusion, accompanying the respective reports with such explanatory statements as will make clear the basis of the conclusion reached but at the same time expressing their willingness to take up the question at some future time if so requested by their respective associations."

It will be seen from the above that no feasible plan for surmounting the difficulties could be devised.

129 That Southern Railway Company, realizing that the reports do not reflect the actual results of operation by States situated as was North Carolina, has been confronted with the necessity of making the reports under State requirements and has made the reports upon the best basis that could be devised without exceedingly heavy accounting cost, and always realizing that the figures given to North Carolina did not correctly represent the net income for a State situated as is North Carolina, and it was on this account that the Tax Commissioner of Southern Railway Company was advised to make it clear to the tax authorities of North Carolina that the net income so stated was not the true net income for North Carolina, and affiant is advised and hence states that Southern Railway's tax officer did make this clear to the Commissioner of Revenue of North Carolina.

That in a test made by Southern Railway Company several years ago it was determined that of the volume of freight traffic handled in the State of North Carolina 43 per cent represented traffic having both origin and destination without the State, and if there has been any change it is believed that at this time the percentage would be greater. No test has been made as to the volume of passenger traffic passing through the State, but it must be admitted that there is a large volume of such traffic.

130 That operating expenses reported to the State of North Carolina do not include any of the initial or destination terminal costs on the above referred to traffic and as the State has been credited with a mileage prorate of revenue accruing on the traffic, the expenses are obviously understated with a consequent overstatement of the net income within that State.

That the Revenue Commissioner, affiant is advised, used the returns for the five-year period 1915-19 and found the annual average net income to be $6,117,625.00. This makes a ratio of 71.20, which

means that it cost 71.20c. to earn a dollar. The System ratio for that period was 77.50, and if that ratio had been applied to the gross revenue which produced the net figure of $6,117,625.00, the result would have been an annual average net income of $4,779,641.00 instead of $6,117,625.00, and if the $4,779,641.00 be capitalized at 6 per cent, the capitalization would have been $79,660,683.00.

That if the Commissioner of Revenue had taken the five years 1916-20, the annual average net income reported to North Carolina would have been $6,385,392.00, and that gives an operating ratio in North Carolina under that erroneous system of arriving at the net, of 74.22. If the gross revenue for the period 1916-20, which produced the above net of $6,385,392.00, had had applied to it the System ratio for the said five-year period of 81.48, the average net for that five years would have been $4,586,793.00, which figure, capi-
131 talized at 6 per cent, would give $76,446,651.00.

That the actual results of operation for the six months ended June 30, 1921, disclose that the Southern Railway Company for said six months lacked, after paying operating expenses, taxes, hire of equipment, and rents for joint facilities, the sum of approximately $4,500,000.00 of earning sufficient money to pay interest on its funded debt and other fixed charges, exclusive of any dividend. It is true that the succeeding four months, namely, to November 1, 1921, have shown an increase and that the sum which the earnings of the Company up to November 1, 1921, lacked for that ten months of being sufficient to pay the interest on its funded indebtedness and other fixed charges, exclusive of dividends, was approximately $1,-600,000.00. It is stated, however, that if the earnings are to be taken as a criterion of the present value of the property, since the property was to be valued as of May 1, 1921, the period subsequent to June 30, 1921, should not be included, but the earnings during that period would be evidence of value when it comes to consider the value on May 1, 1922.

That the station and yard expenses on the Southern Railway are kept separately from the other expenses, and the records show that for the year ended December 31, 1920, the average cost per ton of station and yard expenses for the Southern Railway as a whole
132 was 42.05c., as compared to a cost for similar classes of expense per ton in North Carolina of 25.87c. per ton. This shows that the terminal costs in the State of North Carolina are not as great as those in other States. This is due to the fact that the larger terminals are in other States and heavier terminal expenses are charged to other States, in accordance with the method of keeping the accounts heretofore explained, and is also due to the fact that North Carolina is so located that it acts as a funnel for the Southern Railway's traffic, viz.: traffic moving north and south; traffic from the southeast going northeast; traffic from the southwest going to the northeast; and traffic from the northwest and west which moves east through the State of North Carolina. This may be visualized by reference to the map hereto attached, marked Exhibit "A." On all of this traffic the State of North Carolina receives its full mileage pro-

rate of the revenue, but is not charged with any of the terminal expense, so that when you figure up the terminal expense in North Carolina on a per ton basis, it is shown, as above stated, that it costs 25.87c. per ton as against 42.05c. per ton for the Company as a whole.

That if the operating expenses apportioned to the State of North Carolina included an average System charge for station and yard expenses per ton of freight handled in that State as a charge against the mileage proportion of revenue apportioned to the State, the
133 operating expense for the year ended December 31, 1920, would have been increased and the net operating income would have been decreased by $2,456,432.07.

That the results of operation for the year ended December 31, 1920, on the line Asheville to Murphy, N. C., were—

Railway Operating Revenue	$1,066,883.75
Railway Operating Expenses	1,382,163.37
Ratio Operating Expenses to Op. Rev.	129.55

that is, it took $1.29 to earn $1.00, whereas the same figures for the line Asheville to Salisbury, N. C., were—

Railway Operating Revenue	$5,749,165.96
Railway Operating Expenses	4,448,897.48
Ratio Operating Expenses to Op. Rev.	77.55

that is, the purely operating expenses consumed 77.55c. of every dollar.

The above figures prove that the mountain lines cost more to operate and do not pay as great a return as do the low grade lines; and further prove that the volume of the interstate tonnage coming from east and from the west and southwest and passing over the line Asheville to Salisbury and on which no terminal cost is allocated to North Carolina have cut down the operating cost below what it prop-
134 erly should be if a proportion of the terminal charge was placed against that line.

That while it is true that the aggregate of the freight which originates at and is shipped from Winston-Salem is at times greater than that shipped from any other point on the line of Southern Railway, it is also true that there is included in such shipments, not only the freight which originates at the City of Winston-Salem, but also the freight which is forwarded from Winston-Salem, received by Southern from its connections.

If you deal only with the tonnage of freight which originates at Winston-Salem and is forwarded over Southern Railway lines, Winston-Salem is not, by any means, the largest freight shipping point on the line of Southern Railway.

For instance, for the month of September, 1921, there originated at Richmond, Va., and were forwarded over Southern lines, 19,587 tons of freight, whereas the tonnage originated at Winston-Salem and forwarded over Southern lines was only 11,380 tons, the tonnage shipped from Richmond proper being 72 per cent greater than that originated at and shipped from Wintson-Salem for that month.

It is true that if there be added to the freight which originates at Winston-Salem the freight which is delivered to Southern
135 Railway at Winston-Salem by connections and by it forwarded, which for the month of September, 1921, was 35,314 tons, or more than three times greater than that which originated at Winston-Salem proper, Winston-Salem tonnage would probably be greater than that shipped from any other individual station.

The relatively large proportion of freight forwarded from Winston-Salem over Southern Railway lines coming from connections but which does not originate at Winston-Salem consists largely of interstate coal handled in carload lots and in large volume and in cuts of cars, requiring relatively little terminal handling, which makes the terminal expense at Winston-Salem relatively very small.

The terminal expenses at Winston-Salem are not heavy due to the fact that a large part of the freight originating at Winston-Salem is manufactured tobacco and this traffic is, generally speaking, loaded by the shipper and handled at a minimum expense to the Railway Company.

It is a fact that the total freight revenue, including advanced charges, if any, is very heavy at Winston-Salem, but, as stated, it consists largely of freight on tobacco, which moves for great
136 distances and many other lines participate in the rate. It is a further fact that the transportation cost under the item of loss and damage freight claims are heavier on manufactured tobacco than on any other article of freight. The freight received at Winston-Salem is not by any means the largest of any station on the Southern Railway. Charleston, S. C., Knoxville, Tenn., Atlanta, Ga., Birmingham, Ala., and many other stations receive much more freight.

That the system followed by Southern Railway Company in the apportionment of revenue among States has not heretofore been changed because it has not in any one State heretofore worked to the disadvantage of the carrier so as to affect it financially and because a change in the method of approximating revenues and expenses among the States with a view of making these apportionments on a more accurate basis would have proved to be very expensive.

That as an accounting officer of Southern Railway Company, having had immediate jurisdiction over and to do with its accounts during the past twenty-one years, he can see no reason from an operating standpoint why the cost to earn a dollar of revenue within the State of North Carolina should be less than the average cost to earn a dollar of revenue on the entire System.

That it is manifestly apparent that the low operating ratio
137 produced within the State of North Carolina, as reflected by its reports to the State and through its method of accounting, is due to the fact that the expenses assigned to the State include nothing whatever for assembly and terminal costs on trans-state traffic which has both origin and destination without the borders of the State.

That the Southern Railway Company owns the capital stock of the Atlantic & Yadkin Railway Company. The Atlantic & Yadkin

Railway Company is separately operated, has a separate board of directors, consisting of six members, three of whom are not in any way connected with the Southern Railway Company, namely, C. H. Ireland, of Greensboro, N. C., A. E. Smith, of Mt. Airy, N. C., and J. C. Watkins, of Greensboro, N. C. Its books and accounts are kept separately and its receipts and expenditures are kept distinct and separate from those of the Southern Railway Company. It makes a separate report to the Interstate Commerce Commission and is from an accounting, treasury, corporate and operating standpoint entirely distinct from Southern Railway Company.

(Signed) J. B. DUKE.

Subscribed and sworn to before me this 19th day of December, 1921.

[SEAL.] (Signed) HARRY K. PIMPER,
Notary Public.

138 *Affidavit of C. E. A. McCarthy in Support of Plaintiff's Application for Interlocutory Injunction.*

Filed Dec. 24, 1921.

STATE OF NEW YORK,
City and County of New York:

C. E. A. McCarthy, being first duly sworn, says:

That he resides in the City of New York and has been connected with the Secretary's office of Southern Railway Company for nearly twenty-four years and has been Secretary for the past year; that by virtue of his office he is familiar with the market price of the bonds and other funded indebtedness of Southern Railway Company and of the stock of Southern Railway Company; that the stock books and bond registry books are kept in his office or under his jurisdiction, and the transfers of certificates of stock and the registration of bonds are made in his office, or under his jurisdiction; that the list of bonds, other funded debt, and stocks of Southern Railway Company shown on the statements hereto attached*/ and made part of

*NOTE.—The statements attached to Mr. McCarthy's affidavit are not printed, because too voluminous and the expense of printing is too great. The original statements are filed with the original affidavit in this cause in Court. The statements show for the five year period 1917 to 1921, inclusive, the name of the stock or bond or other obligation, the total par value thereof, the average market price for the year, and the total market value for the year, with the closing market price bid and asked as of April 30th, each year. The summary referred to in the above affidavit is the summary of the total market value for each of the five years as follows:

1917	$329,646,630.76
1918	318,819,008.01
1919	308,668,562.64
1920	295,391,397.62
1921	287,049,221.37
Total	$1,539,574,820.40
Average	$307,914,964.

this affidavit is true and correct, and that the prices shown as of the dates given are the prices taken by him from the publication of such information made by the Commercial and Financial Chronicle, a recognized commercial and financial journal, and that the
139 recapitulation shown is true and correct as based upon the information set forth.

The average of the total market value for the five year period 1917 to 1921, inclusive, is, as based upon and shown by the attached statements, the sum of $307,914,964.

(Signed) C. E. A. McCARTHY.

Subscribed and sworn to before me this 16th day of December, 1921.

[SEAL.] (Signed) JENNIE C. DALE,
Notary Public.

140 *Affidavit of T. H. Gatlin in Support of Plaintiff's Application for Interlocutory Injunction.*

Filed Dec. 24, 1921.

T. H. Gatlin, being first duly sworn, says:

That he has been in the engineering service of railway companies for the past thirty years and is at the present time Chief Engineer of Construction of Southern Railway Company and its affiliated lines.

That he has read the answer of A. D. Watts, et al., in the suit of Southern Railway Company vs. A. D. Watts, et al., and states the following facts in answer to and bearing upon certain allegations in said answer, namely:

That the cost per mile of the mileage between points shown in mountainous sections of North Carolina for 444 miles averages approximately $51,000.00 per mile:

Val. sec.	From—	To—	Miles main track.	Value I. C. C. new.	Aver. cost per mile new.	Max. grade.	Max. curv.
53.	Murphy Jct., N. C.	Murphy, N. C.	122.3	$4,430,398	$36,000	N. 3.9%, S. 4.1%	17 deg.
48.	Biltmore, N. C.	N. C.-S. C. State Line	42.5	2,261,577	53,000	N. 4.7%, S. 2.3%	11 deg.
49.	Hendersonville	Lake Toxaway	42.0	901,310	22,000	N. 2.2%, S. 3.0%	11 deg.
43.	S. C.-N. C. State Line.	Marion, N. C.	64.2	1,766,494	28,000	N. 1.8%, S. 1.6%	12 deg.
33.	Salisbury	N. C.-Tenn. State Line	173.9	13,348,391	77,000	E. 1.8%, W. 3.2%	12 deg.
	Total		444.3	22,708,170	51,000		

141 That the cost figures shown in above statement were compiled by the Bureau of Valuation in its tentative report, except right of way, which is the value compiled by the Land Department of the Southern Railway. The maximum grades and curvature are as reported by the Southern Railway Company to the Interstate Commerce Commission, Bureau of Valuation.

That the C. C. & O. Railroad was constructed in 1907, an entirely new and modern railroad with a maximum grade of 1.4% compensated, and maximum curvature of 6 deg., which largely accounts for heavy construction cost per mile. Whereas, the Southern Railway Company lines in this section of North Carolina have grades as high as 4.7% and curvatures as high as 17 deg., with a heavy operating cost in proportion to curvature and grades. This largely explains the small cost of construction per mile as compared with the cost per mile of construction of the C. C. & O. Railroad.

That the so-called mountain lines of the Southern above referred to have a very much heavier operating cost per year than does the C. C. & O., due to the grades and character of construction, as above set forth. The cost of operation of the 444 miles for a year exceeds the cost of operation of the same mileage in the level portions of the State by $319,906.65.

142 That the actual cost of all work performed in connection with the construction of the double track of 625 miles between Washington and Atlanta was $52,134,000.00. This total cost included the rearrangement of the first main track and a large amount of entirely new double track in a new location, which was necessary in the elimination of excessive grades and curves which existed in the original main track. In a great many cases where the location of new double track is located on original centers, summits were lowered and low places were raised. This involved a large additional expense in operation and construction during the raising and lowering of the first main track. In the construction of the new second main track through the State of North Carolina fully thirty per cent of the first main track was changed to a new location and entirely reconstructed. So that it is not correct to say that the second track cost on an average per mile of $82,884.00. You would have to take into consideration very many other features to arrive at the cost per mile of the second track. As explained, in many instances the total includes the reconstruction of the two tracks. In addition to this, the heavier and more expensive part of the double track construction which is included in the total set forth in the answer was outside of the State of North Carolina.

143 That the terminal facilities in North Carolina do not in the aggregate compare with the terminal facilities in certain other States. It is not a fact that Spencer is the largest terminal yard and repair shop of this company. The following comparative figures show the relative cost of constructing the Spencer yard and terminal with one of the larger terminals located on its

line at Inman, Ga. The gross cost of constructing these terminals *are* as follows:

Inman Yard and Terminal	$789,847.19
Spencer Yard and Terminal	367,455.99

These terminals were reconstructed and enlarged at practically the same time and are located on the same line. The Inman Terminal is nearly twice the size of the Spencer Terminal, with operating expenses in proportion.

(Signed) T. H. GATLIN.

Subscribed and sworn to before me this 22nd day of December, 1921.

(Signed) HARRY K. PIMPER,
Notary Public.

144 *Affidavit of R. E. Johnson and Others in Support of Plaintiff's Application for Interlocutory Injunction.*

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Gaston:

R. E. Johnson, being duly sworn, says:

That he is a citizen of Gaston County, North Carolina, and has been such for a number of years; that he is engaged in the business of selling agent and merchandise distributor and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of
145 interest paid for money and which invested capital yielded.

(Signed) R. E. JOHNSON.

Subscribed and sworn to before me, this the 5th day of October, 1921.

(Signed) EDNA J. AHMAND,
Notary Public, Gaston County, N. C.

My commission expires September 3, 1922.

Affidavit of W. C. Idol.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

W. C. Idol, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of banking, being Cashier of the Wachovia Bank & Trust Company, at High Point, and is acquainted with the rate of interest generally prevailing in the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that, so far as he is informed and
146 believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) W. C. IDOL.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

My commission expires the 23rd day of April, 1923.

Affidavit of V. A. J. Idol.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

V. A. J. Idol, being duly sworn, says:

That he is a citizen of High Point, Guilford County,
147 North Carolina, and has been such for a number of years; that he is engaged in the business of banking, being Cashier of the Commercial National Bank, at High Point, and is acquainted with the rate of interest generally prevailing in the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and ob-

tained upon capital invested in banking, merchandising, and other business was in 1920 and 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) V. A. J. IDOL.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

My commission expires the 23rd day of April, 1923.

148 *Affidavit of Frank Wineskie.*

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

Frank Wineskie, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of manufacturing of mirrors, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) FRANK WINESKIE.

149 Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of Guy E. Wells.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

Guy E. Wells, being duly sworn, says:

That he is a citizen of High Pont, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of automobiles, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

150 Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) GUY E. WELLS.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of J. E. Kirkman.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

J. E. Kirkman, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of manufacturing of furniture and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

151 Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) J. E. KIRKMAN.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of Harry Raymond.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

Harry Raymond, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North
152 Carolina, and has been such for a number of years; that he is engaged in the business of manufacture of veneers, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) HARRY RAYMOND.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

153 *Affidavit of W. H. Slave.*

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

W. H. Slave, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of hosiery manufacturer, and is acquainted with the

current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) W. H. SLAVE.

154 Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of R. T. Amos.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

R. T. Amos being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of manufacture of hosiery, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was
155 in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) R. T. AMOS.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of Wallace B. Davis.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Buncombe County:

Wallace B. Davis, being duly sworn, deposes and says:
That he is President of the Central Bank and Trust Company of Asheville, North Carolina; and has been engaged in the banking business at Asheville for more than fifteen years; that the usual and ordinary rate of interest charged on loans in this community during 1920 and the spring of 1921 was more than six per cent and that when loans were made by banks at six per — it was
156 usually with the understanding that a certain per cent of the loan be kept on deposit. Some loans were made at six per cent straight, but the general rule among persons having money to loan is that the loans are made at from seven to eight per cent, and sometimes even at a higher rate, and this has been so for several years.

(Signed) W. B. DAVIS.

Sworn to and subscribed before me this 23rd day of September, 1921.

(Signed) THOMAS S. ROLLINS,
Notary Public, Buncombe County, North Carolina.

Affidavit of S. M. Hanes.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Buncombe County:

S. M. Hanes, being duly sworn, deposes and says:
That he is Secretary of the Bankers Trust and Title Insurance Company, of Asheville, North Carolina, and that among other things his company is engaged in buying and selling real
157 estate notes. That the usual and ordinary rate of interest charged on loans in this community during 1920 and the spring of 1921, was more than six per cent; that the usual and customary rate of interest charged on loans in this community during said time was from seven to eight per cent, and some loans were even made at a higher rate of interest.

(Signed) S. M. HANES.

Sworn to and subscribed before me this 23rd day of September, 1921.

(Signed) THOMAS S. ROLLINS,
Notary Public, Buncombe County, North Carolina.

Affidavit of R. H. Edwards.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Wayne County:

R. H. Edwards, being duly sworn, says that he is President of the Farmers Loan & Trust Company of the City of Goldsboro; that he is familiar with the current rate of interest charged during 1920 and the spring of 1921 in the County of Wayne, State of North Carolina; that in the opinion of affiant, a majority of the loans made
158 during that period was 8 per cent.

(Signed) R. H. EDWARDS.

Sworn to and subscribed before me this the 20th day of September, 1921.

(Signed) RUTH MIDDLETON,
Notary Public.

My commission expires Aug. 27, 1922.

Affidavit of Geo. D. Bizzell.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Wayne County:

Geo. D. Bizzell, being duly sworn, says that he is Chairman of the County Board of Commissioners of Wayne County; that he is familiar with the current rate of interest charged during 1920 and the spring of 1921 in the County of Wayne, State of North Carolina; that in opinion of affiant, a majority of the loans made during that period was 8 per cent; that during that period the County of Wayne borrowed money in various amounts and paid as much as 8 per cent interest.

(Signed) GEO. D. BIZZELL.

159 Sworn to and subscribed before me this the 20th day of September, 1921.

(Signed) RUTH MIDDLETON,
Notary Public.

My commission expires Aug. 27, 1922.

Affidavit of Fred R. Mintz.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Wayne County:

Fred R. Mintz, being duly sworn, says that he is a member of the co-partnership, trading under the firm name of Williamson Real Estate Company of the Town of Mount Olive, County of Wayne, State

of North Carolina; that he has represented the County of Wayne in the General Assembly for two sessions and was for a number of years owner and editor of the Mount Olive Tribune, a newspaper published in Wayne County; that he is familiar with the current rate of interest charged during 1920 and the spring of 1921 in the County of Wayne, State of North Carolina that in the opinion of affiant, a majority of the loans made during that period was 8 per cent and over.

(Signed) FRED R. MINTZ.

Sworn to and sulscribed before me this the 20th day of September, 1921.

(Signed) RUTH MIDDLETON,
Notary Public.

My commission expires Aug. 27, 1922.

160 *Affidavit of Members of Tax Commission.*

Filed January 23, 1922.

In the District Court of the United States for the Western District of North Carolina.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

And the Other Suits Against the Same Defendants Brought by Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Norfolk & Southern Railroad Company, Atlantic & Yadkin Railway Company.

Affidavit by the Members of the Former Tax Commission of No. Ca.

STATE OF NORTH CAROLINA,
Wake County:

W. T. Lee, George P. Pell and A. J. Maxwell make this statement under oath.

That in the years 1919 and 1920 W. T. Lee, George P. Pell and A. J. Maxwell were members of and constituted the State Tax Commission, W. T. Lee being Chairman of the State Tax Commission, and had and exercised the duties and responsibilities conferred upon them by Chapter 92 of the Public Laws of 1919 and by Chapter 84 of the Public Laws of 1919, and as the State Tax Commission exercised the powers and duties of a Board of Appraisers of all properties, located within the State of North Carolina, of all railroad companies (excepting certain incidental properties of such companies assessed by local authorities) and also had and exercised supervision of the valuation of all real property of every kind and of the listing

and valuation of all personal property of every kind in all
161 counties of the State. In the supervision of the listing and valuation of such properties by local assessing officers, under the laws hereinbefore referred to, it was the purpose to have all lands listed and valued equally at the true value of such lands and assessing officers were required to ascertain the actual sales value of lands, where there had been a recent sale, and to use the information thus obtained, as well as all other information obtainable, in finding the actual true value of such lands on the first day of May 1919, and in estimating the value of other similar lands, in cases where there had been no recent sales, and that as to industrial plants of all kinds and the tracks, structures, buildings and equipment of railroad companies—properties which had not been subject to unit sales as a whole and the value of which could not therefore be determined with relation to an actual sale of such properties—it was the purpose to require, and the State Tax Commission did in so far as it could reasonably do so, the owners of industrial plants and railroad companies, to furnish information on forms prepared by experienced persons employed by the State Tax Commission, complete detailed information, under authority of section thirty-one of Chapter 84 of the Public Laws of 1919, of the cost of reproduction of such industrial plants on the price level of May 1, 1919, and as to railroads the cost of reproduction of the properties of such companies new (on May 1, 1919, including side tracks, doubled tracks, and all properties owned by such companies in this State, less reasonable depreciation for such of its properties as had depreciated in value, and also information as to capital stock, bonds and other indebtedness, earnings, and so on.

The Southern Railway Company, the Atlantic Coast Line Railroad Company the Seaboard Air Line Railway Company and the Norfolk-Southern Railroad Company, in response to demands made upon them for specific and detailed information as to the cost of reproduction of the properties in this State of each of these companies, did file with the State Tax Commission certain sets of
162 figures, now on file with the Commissioner of Revenue, but did not pretend that such figures even approximated the cost of reproduction of the properties owned by these companies, or either of them, in this State, in the year 1919, but, on the other hand, insisted that it would not be possible for them to furnish this information at any reasonable cost or at any cost within a period of several years. The State Tax Commission, therefore, did not, have the benefit of this specific detailed information with respect to the value of the particular properties in this State of these several railroad companies which it did have with respect to, and used in, the valuation of properties of industrial enterprises within the State, and of necessity had to form its valuation of the properties of these companies without having this information and by making the best use that it could of other information furnished by these companies and information *furnished by these companies and information* on file with and in the records of the North Carolina Corporation Commission.

One of the evidences of value submitted for consideration, by each

of these companies was what is technically known as "investment accounts" of these companies, not within the State of North Carolina, but throughout the entire systems of Railroads owned by them in many states other than North Carolina; and it was insisted by them that the proportion of their total investment account which their main line mileage within the State of North Carolina bore to the total main line mileage of each of these several railway systems throughout the several states in which they operated would give a fair value of the property of such companies within the State of North Carolina, except that it was insisted that they had larger and more expensive terminal facilities outside the State of North Carolina than they had at any one point within the State of North Carolina, and that for this reason the straight mileage proportion of their investment account would be more than a fair proportion for this State.

163 The State Tax Commission was not able to agree with them that this method would fairly determine the value of their properties within the State of North Carolina, for that, first, their investment accounts represented investments made in the properties going back through a long period of years to their original organizations, and such investment having been in a large part made in years when the general price level of materials, commodities and labor was very much lower than the price level for materials, commodities and labor was on May first 1919; and for that, second, a straight mileage proportion of their lines did not, in our opinion, accurately or fairly represent the actual value of the properties of either the Southern Railway Company, the Atlantic Coast Line Railroad Company or the Seaboard Air Line Railway Company within the State of North Carolina, the lines of these companies within North Carolina having, in our opinion, a much greater value than an average based upon the mileage for their entire systems, in that they have a larger proportion of double track main line mileage in North Carolina than for their entire systems, and in that both the gross and net earnings of each of these railway lines within the State of North Carolina is much greater than the average gross and net earnings per mile for their entire systems. All of this was duly considered by the Commission in proportioning, dividing and determining the valuation of the property of the said railroads in North Carolina as provided by law.

For the year 1918, the last calendar year prior to the first day of May 1919, the excess net operating revenue per mile within the State of North Carolina of each of these railway companies in excess of the net operating revenue per mile for their entire systems, stated in per centages as shown by their reports on file with the Corporation Commission, was as follows:

164 Southern Railway Company 50.48;
Atlantic Coast Line Railroad Company 19.75;
Seaboard Air Line Railway Company 250.01.

A satisfactory estimate of value could not be made based upon the market value of the stocks and bonds of these companies on the first day of May 1919, for the reason that the limited market and the

limited number of shares and bonds sold on the market did not furnish, in our judgment, a fair index of the actual value of these properties as a whole, and more particularly did not furnish an index of the actual value of the properties of these companies located within the State of North Carolina for the reasons hereinbefore stated; nor was it considered that the actual value of these properties could be fairly determined by their earnings, until there should be a fair return to normal conditions of operating costs, flow of traffic and stabilization of transportation rates.

For the reasons hereinbefore set out the valuation finally made or determined by the State Tax Commission of the properties of each of these railway companies within the State of North Carolina as of the first day of May 1919, was not made with the sole and exclusive relation to any one element or indicia of value, but after due and proper consideration of all of them and upon the best knowledge and information obtainable by the Commission.

The members of the Commission have for years been actively engaged in the matters of valuation for rate making and taxation purposes in North Carolina and are acquainted with property values of railroads in the State and in assessing the properties of the plaintiffs the Commission gave due consideration to all factors and methods prescribed by the law governing such valuations and the values of said properties as fixed and determined by the Commission as of the first day of May 1919, were, in the opinion of affiants, fair, just and reasonable.

As to the properties of the Southern Railway Company in the State of North Carolina, a valuation of $111,308.325 was
165 made, which was in fact the proportion of the investment account of the Southern Railway Company which the gross earnings of that company within the State of North Carolina bore to the total gross earnings of the Southern Railway Company for the entire system. Upon hearing and review of this valuation, after notice to the Southern Railway Company, it was reduced to $101,960.416, which was in fact the amount which the average net earnings of the Southern Railway Company within the State of North Carolina for the preceding five years, capitalized upon a basis or theory of six per cent, would have produced.

In general the same method was followed in fixing the valuation of the total properties in the State of the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railroad Company, and the Norfolk and Southern Railroad Company. In each case the basic consideration was the cost of reproduction value, less depreciation, which, in the absence of correct reports of such values by the railroads as they were required by law to furnish and which were duly called for by the Commission, was arrived at as accurately as possible by a consideration of the investment account. In each case a tentative cost of reproduction value was found in this way, which, except in the case of the Norfolk and Southern, was in excess of the assessment as finally arrived at. In the case of the Norfolk and Southern this investment account, or cost of reproduction, value was the same as the final assessment and that railroad made no applica-

tion to the Commission for rehearing on that assessment and took no exception thereto. In the case of the other railroads, a consideration of capitalization of net income and of the other factors which the Tax Commission was authorized by law to consider led to the reduction of this investment account, or cost of reproduction, value to the valuation fixed as the final assessment.

After the assessments of the properties of the plaintiffs had been arrived at by the Tax Commission pursuant to the Revalua-
166 tion Act (Public Laws of 1919, Chapter 84) the Commission, as required by law, made report of its action and valuation to the General Assembly of North Carolina and thereupon, in the special session of 1920 the General Assembly, by Chap. 1, Public Laws, Extra Session 1920, specifically approved said valuations as correct and adopted them as and declared them to be the basis for taxation for the years 1920-1923 inclusive, except as such valuations should be thereafter changed according to law. And the affiants are informed and believe and so aver that the said valuations, so made by the Commission and reported to the General Assembly and approved and adopted by it, have remained and still are the basis for taxation of the said railroads in North Carolina except in so far as they have been modified or changed by the Commissioner of Revenue upon application made to him by the said railroads for review as provided by law.

As to the tentative values of the engineers of the Interstate Commerce Commission, referred to by the plaintiffs in these suits as being proper indices of the correct valuation of their total properties in North Carolina, the said tentative values were arrived at upon the basis of an inventory of the railroads' properties as of the date of June 30, 1914. The affiants state of their own knowledge that the said prices prevailing in 1914 as to material labor, and all costs of railroad construction, were abnormally low, that since that time such prices have greatly increased, and that in 1919 and in 1920 the said prices of labor, materials, and all things going into the construction of railroads were very much higher than those of 1914 upon which the said tentative figures of the Interstate Commerce Commission were based. In the opinion of the affiants the said tentative figures in no way furnish a proper index or test of the value of the properties of railroads in North Carolina in 1919 and 1920.

It was the purpose of the State Tax Commission in
166½ valuing the property of transportation companies and other companies exercising the right of eminent domain, and in the supervision of the valuation of all other property by local assessing officers, to carry out and to have carried out what the State Tax Commission understood to be the general purpose of Chapter 84 of the Public Laws of 1919, that all property of every class should be fairly and equally valued at its actual value, and in evidence that no injustice was done to the Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railroad Company and the Norfolk-Southern Railroad Company, there is attached hereto a copy of the report of the State Tax Commission to the Special Session of the General Assembly of 1920, showing, by

comparison, the valuation of 1920 compared with the former valuation of each of the several different classes of properties within the State of North Carolina and showing that the increase in valuation of all railroad property within the State of North Carolina was 99 per cent; of real property 296 per cent; and of all property of all classes within the State 194 per cent.

W. T. LEE,
A. J. MAXWELL,
GEORGE P. PELL.

Sworn to and subscribed before me this January 21, 1922.

[SEAL.] W. H. PITTMAN,
Notary Public.

My commission expires July 29, 1922.

167 *Motion of Plaintiff to Amend Bill, and Order Denying Motion.*

Filed — 28, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue, et al., Defendant.

Motion to Amend.

Comes the complainant and moves the Court for leave to amend its bill in accordance with the amendment hereto attached a copy of which has been served upon counsel for the defendants.

Dated January 24, 1922.

S. R. PRINCE,
Solicitor for Complainant.

The foregoing motion of complainant to amend its bill in this cause came on by consent of all parties to be heard by Circuit Judge Edmund Waddill and District Judges James E. Boyd and Henry G. Connor, the Court convened under Section 266 of the Judicial Code of the United States for the hearing of the complainant's application for an interlocutory injunction, and the Court, having duly considered the said motion and being of the opinion that said amendment should not be allowed.

It is ordered and decreed that complainant's motion to amend be and it is denied.

EDMUND WADDILL, JR.,
Circuit Judge.

JAS. E. BOYD,
H. G. CONNOR,
District Judges.

168 *Amendment to Bill, Adding Secs. 8½ and 14½.*

Filed January 24, 1922.

In the District Court of the United States for the Western District of North Carolina.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

Southern Railway Company, by leave of Court first had and obtained, amends its bill of complaint filed herein by adding the following sections:

(8½) That the undervaluation of real and personal property in North Carolina, other than the property of railroads, including that of this plaintiff, prior to and since the enactment of the Revaluation Act and Section 28 (*a*) of the Machinery Act of 1921, has been systematic and intentional with the design to discriminate against plaintiff and other railroads and cast upon them an undue share of the burdens of taxation for the purpose of relieving such other property of its just proportion of taxation, and by this systematic and intentional undervaluation of real and personal property, the property of plaintiff has been valued higher than that of individuals and other corporations, and plaintiff avers that such discrimination is in contravention of Article 5, Section 3 of the Constitution of North Carolina and of the Fourteenth Amendment to the Constitution of the United States.

(14½) Plaintiff shows that Schedule D of the Revenue Act of 1921, known as the Income Tax, is unconstitutional and void for the following reasons:

(*a*) For that it is not a tax on income, but is in truth and in fact a tax upon operating income derived by railroad companies from interstate and intrastate commerce, and for the reason that
169 from the operating revenue arrived at under the said law there are not allowed many of the deductions required by the Standard Classification of Accounts of the Interstate Commerce Commission, which Standard Classification of Accounts was promulgated by the said Interstate Commerce Commission under the provisions

of the Interstate Commerce Act passed by Congress, and which are so regulated as to ascertain in what is the net income of railroads engaged in interstate commerce. Complainant says that among other items which are directed to be deducted by railroads in interstate commerce from operating income, in order to arrive at net income, are the following:

Rent for leased roads,
Joint facility rents
Miscellaneous rents
Separately operated properties—loss
Interest on unfunded debt
Income transferred to other companies
Miscellaneous income charges
Interest on funded debt,

and avers that in order to ascertain the net income of railroads engaged in business in interstate commerce, as plaintiff is, according to said Standard Classification of Accounts of the Interstate Commerce Commission, promulgated as aforesaid, it is necessary to deduct the above items.

(*b*) The method of arriving at net income stated in Section D of the said Act as applied to this interstate carrier, is not net income as the same is defined and arrived at under the Standard Classification of Accounts of the Interstate Commerce Commisison, in that the Standard Classification of Accounts directs that there shall be deducted from the net operating income not only the deductions provided for in said law of North Carolina, but in addition thereto the following:

Rent for leased roads
Joint facility rents
Miscellaneous rents
Separately operated properties—loss
Interest on unfunded debt
Income transferred to other companies
Miscellaneous income charges
Interest on funded debt.

170 The result is that the machinery provided for by the said statute for the ascertainment of net income does not in truth and in fact produce net income, which under Section 101 it is declared to be the purpose of the said Act to tax. Furthermore, the method outlined in said law for arriving at net income produces a figure which is not in truth net income, but which contains in part gross income, and in so far as it does include gross income, which gross is derived from interstate commerce, said tax is a direct burden upon interstate commerce and is void under the Commerce Clause of the Constitution of the United States.

(*c*) Plaintiff further says that the said statute is unconstitutional and void for that in computing net income it permits corporations

other than this plaintiff and like corporations named in said Section 202 to make the many deductions set forth in Section 306 of said Act. This discrimination in favor of corporations and individuals against railroad companies in making deductions in order to ascertain net income violates the Constitution of North Carolina and the United States.

(*d*) Plaintiff further says that the statute is violative of Article 5, Section 3 of the Constitution of North Carolina, for that it does not levy upon railroads and other public service corporations named in said Section 202 a tax on net income, but levies a tax upon operating revenue derived from interstate and intrastate commerce and does not permit the deductions necessary and incidental to the business of plaintiff and expended by it from said income in order to determine net income, and is in violation of the Interstate Commerce Clause of the Constitution of the United States in that it permits a tax as an income tax to be placed on gross income derived from interstate commerce, thereby burdenihg interstate commerce.

(*e*) That said so-called Income Tax Law violates the Transportation Act of Congress and the Interstate Commerce Act in that
171 it seeks to prescribe a method of accounting by this interstate carrier, when said Acts of Congress have delegated the power to prescribe said accounting to the Interstate Commerce Commission and the said Commission has prescribed and directed that this plaintiff and other interstate carriers keep their accounts in accordance with the methods so prescribed by it.

S. R. PRINCE,
Solicitor for Plaintiff.

STATE OF NORTH CAROLINA,
County of Guilford:.

Murray R. Hubbard, being first duly sworn, deposes and says: That Southern Railway Company, plaintiff herein, is a corporation and that he is one of its officers, to-wit; Tax Commissioner; that he has read the foregoing amendment to the bill of complaint and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein set forth on information and belief and that as to those matters he believes it to be true.

MURRAY R. HUBBARD.

Subscribed and sworn to before me this 24th day of January 1922.

[SEAL.]

R. L. BLAYLOCK,
Clerk U. S. Court.

172 *Affidavit of B. M. Rogers.*

Filed January 24th, 1922.

STATE OF NORTH CAROLINA,
County of Alamance, ss:

Affiant B. M. Rogers, says that he is Register of Deeds for Alamance County, and has been a resident of Alamance for years; that he has made an examination of all deeds recorded in Alamance County, from January 1, 1921, to June 30, 1921, inclusive, in which the consideration appears to be more than One Thousand Dollars ($1,000.00) and also of the assessed value of the real estate embraced in said deeds for the year of 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration of the conveyance and the assessed value of the said property for the year 1921; that when the consideration shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows; from the amount of the Federal Tax imposed and entered on the record, viz: when the consideration or value of the interest in the property conveyed, exclusive of the value of any lien or encumbrance thereon exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof in excess of $500, 50 cents; and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $517,606.00 and that the total assessed values for taxation for the year 1921 of the properties embraced in said deeds contained in said statement amount to $355,184.00. The statement is hereto attached, marked Exhibit "A."

B. M. ROGERS,
Affiant.

Subscribed and sworn to before me this 10th day of January, 1922.
MIRIAM WILLIAMS, [SEAL.]
Notary Public.

My Commission expires 11/22/22.

Date of conveyance, month, day.	Grantor.	Grantee.	Jan. 1, 1921-June 30, 1921, consideration.		1921 assessed value.
5/1	A. E. Sykes	A. H. Fogleman	$6,000		$6,050
5/23	J. R. McNally	Flora Joyner	2,375		1,275
4/30	L. R. Blanchard	Real Est. Ins. Co.	3,770		3,953
5/24	Pleasant Dixon	John M. Baker	1,995		2,280
5/20	H. F. Mitchell	John F. Thompson	5,500	s	4,250
5/11	T. B. De Loach	Julia L. Deloach	4,000		4,000
6/4	W. B. Bowen	D. B. Wagoner	3,500		4,250
3/7	H. Glen Holt	R. A. Sharpe	2,600		2,125
6/1	J. L. Kernodle	O. H. Chaplin	5,000	s	2,175
6/23	C. B. Riddle	Mebane Real Est. & Trust Co.	5,000	s	3,000
6/4	S. G. Foster	J. M. Crutchfield	3,000		2,500
6/13	W. H. Kirkpatrick	E. T. Horne	2,000	s	1,800
6/28	Jno. W. Glosson	W. D. Bowman	1,700		765
5/30	H. T. Sharpe	S. C. Jones	2,000	s	1,403
6/20	G. B. Prickett	Stella Loy	1,800		2,720
1/10	Jno. A. Trollinger	Wm. Carter	1,567		1,424
6/4	J. M. Crutchfield	S. T. Foster	2,000		1,700
2/16	R. D. Farrell	Ala. Motor Co.	1,025		829
3/26	F. L. White	M. B. Miles	1,100		500
3/5	W. A. Cash	A. G. Ausley	2,500	s	2,338
6/28	C. M. Teer	Ala. Ins. & R. E. Co.	4,000	s	3,500
5/25	Jas. Brown	W. A. Clapp	1,750		1,530
4/30	J. T. Dick	Jno. R. Smith	2,000	s	2,550
5/14	J. R. Smith	Endora C. Smith	1,000		340

3/14	C. E. Tate	Effie A. Tate	3,500		2,965
2/1	Mebane R. E. & T. Co.	C. B. Riddle	5,000	s	3,000
2/12	" "	Alice M. Bowland	9,500		6,000
2/22	" "	Garland Hoffman	5,000	s	3,400
2/22	Ala. Ins. & R. E. Co.	C. M. Friddle	3,500		2,125
3/3	Mebane R. E. & T. Co.	Jno. A. Trollinger	30,000	s	14,760
2/1	Ala. Ins. & R. E. Co.	H. T. Baldwin	2,500		1,800
3/18	Mebane R. E. & T. Co.	J. H. McLeod	14,000	s	8,000
3/15	" "	Ben. F. Smith	3,000	s	2,288
3/15	" "	Kirkman P. & H. Co.	4,500	s	3,000
3/23	" "	B. B. Vaughn	10,000	s	5,950
3/29	Ala. Ins. & R. E. Co.	Dora I. Hinshaw	4,500		2,762
4/1	Mebane L. & M. Co.	Jas. S. Cheek	1,248		1,020
1/4	Ala. Ins. & R. E. Co.	H. B. Hunter	8,000	s	7,000
2/28	Real Est. & Ins. Co.	J. G. Levey	9,600		5,984
4/8	Ala. Ins. & R. E. Co.	B. F. Thornton	2,705		2,300
4/1	" "	W. P. Fowler	1,750		1,500
2/28	Real Est. & Ins. Co.	David R. Barber	1,250		912
5/12	Mebane R. E. & T. Co.	W. H. Trollinger	5,500	s	3,975
3/11	Ala. Ins. & R. E. Co.	C. C. Howard	9,000		850
6/8	Sta. R. & S. Co.	F. B. Carboy	3,500		3,500
6/6	Mebane R. E. & T. Co.	Margaret Clegg	13,000		5,525
6/11	Ala. Ins. & R. E. Co.	Jennie L. Lasley	1,425		1,200
1/1	Mebane R. E. & T. Co.	W. B. Bowman	5,000	s	4,250
6/24	Standard R. & S. Co.	B. W. Everett	1,500	s	1,500
6/24	Ala. Ins. & R. E. Co.	W. P. Lawrence	1,875		2,100
6/7	" "	C. W. Whitt	2,725		2,125
5/25	" "	R. L. Self & A. T. Thompson	1,250		1,000
5/5	" "	H. & C. A. Hughes	5,000	s	7,228
1/20	Mebane R. E. & T. Co.	C. F. Bradshaw	2,000	s	1,800

Date of conveyance, month, day.	Grantor.	Grantee.	Jan. 1, 1921-June 30, 1921, consideration.		1921 assessed value.
1/20	Standard R. & S. Co.	F. W. Moore	8,000	s	6,750
1/22	A. L. Fuquay	Jno. A. Murchison	7,000		3,396
1/15	Harden & May	W. E. Payne	1,295		1,063
1/29	A. L. Pickard	——— ———	2,500	s	2,150
1/31	Beulah Allen	Ruth Hinshaw	1,000	s	528
1/1	J. H. Holt	A. B. Fitch	1,000		3,825
1/15	S. G. Morgan	Jno. H. Mebane	1,500	s	1,500
1/31	P. L. Cooper	B. Goodman & I. I. Levine	6,500		3,825
1/17	M. M. Gerringer	J. L. Jackson	3,750		2,040
2/4	J. W. Johnston	R. W. Traynham	2,500	s	3.500
2/12	L. C. Jordan	T. F. Carden	1,000		595
2/14	Robt. Montgomery	A. W. Hedgepeth	2,700		1,020
2/19	C. M. Euliss	R. Simpson	3,500		850
2/21	C. O. Smith	Peter Hughes	5.000		4,380
2/18	C. Martindale	Eli Abee	1,000		850
2/19	R. Simpson	Gile & Shepherd	2,500	s	2,550
3/7	B. D. Guthrie	T. A. Murphy	2,850		1,700
3/1	Thos. A. Smith	D. B. Moore	3,000		1,913
3/7	H. L. Graves	W. N. Thompson	1,200		1,250
2/21	J. G. Pritchett	Mebane R. E. & T. Co.	5,500		2,600
3/11	R. A. Coble	P. A. Sharpe	3,525		1,678
3/12	T. B. Deloache	S. W. Caddell	1,300		1,000
3/15	W. S. Crawford	T. C. Phillips	1,500		1,400
3/9	R. W. Malone	Mebane R. E. & T. Co.	2,250		1,318

3/7	R. M. Morrow	Nat'l R. C. Co.	13,000		12,750
3/29	Chas. A. Hinshaw	Ala. Ins. & R. E. Co.	2,300		2,000
4/1	J. H. McLeod	S. G. Morgan	1,500		1,000
2/28	J. E. Carrigan	W. J. Graham	12,000		7,750
4/1	James G. Holt	Stan. R. & S. Co.	1,500		1,000
1/11	M. R. Kirkman	E. T. Sharpe	2,000		1,360
2/5	A. L. King	L. Tillman	2,500		1,700
4/25	C. O. Smith	John H. Jordan	4,564		4,380
4/24	John A. Ireland	W. E. Herndon	1,200		850
4/25	Dora Lineberry	E. T. Horne	2,000		1,500
1/29	John A. Barnwell	David R. Haith	6,000		3,613
5/5	C. E. Tabscott	Ed. W. Ross	6,000		5,856
5/3	W. E. White	White Furn. Co.	5,000		4,500
5/14	A. D. Tate	James H. Rich	1,500	s	1,025
3/11	J. W. Fix	Addie Ray Boone	15,700		10,000
3/31	Dixie Milling Co.	Dr. J. L. Kernodle	7,000		6,373
4/7	Ala. Ins. & R. E. Co.	Mebane R. E. & T. Co.	7,500		4,000
4/1	J. T. Albright	Bessie Foust	4,200		3,400
3/16	Luco Loyd	Susan Crawford	2,250		4,637
5/12	Mrs. Lucy J. Holmes	A. D. Tate	5,500		5,000
5/2	J. W. Page	M. B. Lindsay	27,000		9,775
5/26	J. M. Fix	A. E. Sykes	1,712		1,200
4/28	D. V. Quakenbush	Nettie Oldham	3,500	s	2,500
2/18	O. J. Paris & A. M. Hadley	C. E. Coggins	3,500		2,550
6/11	N. C. Railroad Co.	Stan. R. & S. Co.	60,000		30,600
6/20	Graham R. E. Co.	Ala. Ins. & R. E. Co.	1,000		1,200
4/15	J. Dolph Long	E. B. Huffine	3,600		5,100
3/1	Central L. & T. Co.	H. Frank Mitchell	1,700.00		808
		Total	$170,426.00		$108,867.00

174½ In the District Court of the United States for the Western District of North Carolina.

In Equity.—No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS, et al.

Affidavit of C. J. O'Brien in Support of Application for Interlocutory Injunction.

175 *Affidavit of C. J. O'Brien.*

Filed Jan. 24, 1922.

In the District Court of the United States for Western District of North Carolina.

In Equity.—No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS et al.

C. J. O'Brien, being duly sworn, says that he has brought together the information shown in the attached affidavits, for the several Counties of North Carolina, set opposite the name of each affiant, and finds that said affidavits show:

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Alamance	B. M. Rogers	$517,606.00	$355,184.00	68.62
Alexander	J. P. Crouch	50,175.00	24,860.00	49.54

Alleghany	E. L. McMillan	97,167.56	70,088.00	72.13
Anson	Fred J. Coxe	111,603.42	67,721.00	60.68
Ashe	C. W. Higgins	225,374.89	122,591.00	54.39
Avery	Avery Goodman	63,480.50	52,975.00	83.45
Beaufort	Chas. M. Weeks	555,540.00	393,592.00	70.84
Bertie	P. T. Perry	304,883.80	153,828.00	50.46
Bladen	D. B. Johnson	131,930.00	123,267.00	93.40
Brunswick	L. J. Poisson	61,610.00	44,600.00	72.39
Buncombe	George H. Wright	3,261,452.00	2,255,839.00	69.16
Burke	George H. Battle	96,380.00	51,268.00	53.19

176

Cabarrus	John H. Oglesby	146,619.00	90,602.00	61.78
Caldwell	John M. Crisp	85,905.00	74,960.00	87.26
Camden	P. G. Sawyer and M. B. Simpson	107,200.00	47,024.00	43.85
Carteret	D. W. Morton	121,433.00	119,800.00	98.66
Caswell	E. F. Upchurch	92,506.00	56,660.00	61.25
Catawba	Klutz B. Clippard	369,116.00	211,231.00	57.22
Chatham	Jas. L. Griffin	99,445.00	58,594.00	58.90
Cherokee	W. M. West	128,522.00	84,042.00	65.39
Chowan	R. W. Boyce	106,545.00	97,300.00	91.32
Clay	Wayne L. Swanson	54,550.00	39,010.00	71.51
Cleveland	R. L. Weathers	428,109.35	301,044.00	70.30
Columbus	L. V. Grady	228,820.00	167,222.00	73.08
Craven	Wm. Dunn, Jr	379,831.66	310,610.00	81.77
Cumberland	E. L. Hall	414,122.03	270,615.00	65.35
Currituck	P. G. Sawyer and M. B. Simpson	108,781.86	72,210.32	66.37
Dare		.....	.....	....

Affidavit of C. J. O'Brien—Continued.

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Rockingham	Nurna Winstead	815,821.00	524,584.00	64.30
Rowan	Max L. Barker	179,097.90	130,391.75	65.52
Rutherford	M. T. Wilkie	106,706.93	79,672.00	74.70
Sampson	H. A. Grady	222,556.00	110,837.00	49.80
Scotland	T. J. Dunn	61,200.00	39,561.00	64.64
Stanley	George P. Palmer	151,374.00	119,256.00	78.78
Stokes	N. Earl Wall	169,465.00	100,339.00	59.20
Surry	B. F. Folger	198,624.00	108,860.00	54.80
Swain	D. E. Nichols	55,435.00	40,374.00	72.83
Transylvania	Roland Owen	39,950.00	24,870.00	62.25
Tyrrell	A. Melson	48,603.33	34,232.00	70.41
Union	M. L. Flow	473,906.00	331,924.00	70.00
Vance	Robert G. Kittrell	500,066.00	307,311.00	61.50
Wake	H. E. Glenn	810,175.00	716,648.00	88.45
Warren	E. C. Price	131,427.33	69,200.00	52.60
Washington	Z. V. Norman	112,102.50	58,230.50	51.95
Watauga	T. E. Bingham	207,632.00	133,018.00	64.07
Wayne	D. E. Grantham	244,675.00	87,851.00	35.91
Wilkes	Frances Hendren	113,512.40	66,214.00	58.33
Wilson	R. L. Brinkley	304,964.00	191,107.00	63.44
Yadkin	John D. Reece	71,495.00	48,128.50	67.31
Yancey	C. C. Caraway	194,974.00	173,972.00	89.22
Total		$30,598,475.24	$20,373,684.07	66.58

[SEAL.] (Signed) C. J. O'BRIEN.

Subscribed and sworn to before me, this 24th day of January, 1922.

[SEAL.] (Signed) C. J. BLAYLOCK,
Clerk U. S. Court.

178½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY
vs.
A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Further Affidavits Filed January 24, 1922, in Support of Plaintiff's Application for Interlocutory Injunction.

S. R. Prince,
Solicitor for Plaintiff.
L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
Of Counsel.

179 *Affidavit of Murray R. Hubbard.*

Filed Jany. 24, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY, Complainant,
vs.
A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Affidavit of Murray R. Hubbard.

STATE OF NORTH CAROLINA,
County of Guilford:

Before me, R. L. Blaylock, Clerk, U. S. District Court Western District of North Carolina, personally appeared Murray R. Hubbard, who, being by me first duly sworn, on oath says:

(1) That the statement in the affidavit of the members of the former State Tax Commission to the effect that Southern Railway Company submitted as an evidence of its true value its investment
180 account and insisted that the proportion of its total investment account which its main line mileage within the State of North Carolina bore to the total main line mileage would give a fair value of the property of Southern Railway Company, except valuable terminals outside of the State, is incorrect; on the contrary, he insisted orally and in brief before the State Tax Commission and again before the Commissioner of Revenue that the Southern Railway Company's investment account was not a true index of the value of its property in North Carolina for tax purposes, and that he is the only person who submitted any facts or made any statement before the Tax Commission on behalf of Southern Railway Company.

(2) That he, as representing Southern Railway Company, furnished to the Commission, in response to its demand, a mass of detailed information as to the cost of reproduction of the properties of his Company in the State of North Carolina; said statements were correct and accurate as to the rolling stock and equipment. It was stated that as to the physical value of the property, other than rolling stock, that was as complete as the limited time given Southern Railway within which to prepare the same permitted. He is able to set out at this time that the values presented in said accounts approximated the values now given out by the Bureau of Valuation of the Interstate Commerce Commission in their tentative report, as set forth in the bill filed in this case; that upon filing the
181 same the Tax Commission declined to consider it, stating that it was worthless for the purpose furnished.

(3) That he attaches hereto a classification of accounts prescribed by the Interstate Commerce Commission and followed by the Southern Railway Company in the keeping of its books and accounts. He has been furnished by the Accounting Department of Southern Railway Company with the actual results of operations for ten months and the estimated result for two months of the year 1921; that if the amount upon which the income tax in North Carolina is to be paid is arrived at in accordance with the income tax law, the amount of said tax to be paid by the Southern Railway Company for the year 1921 will approximate $78,000.00; that if the amount upon which said income tax for the State of North Carolina is based is the net income as the same is arrived at by following the Interstate Commerce Commission's classification of accounts, the tax to be paid for the year 1921 will approximate $8,000.

(4) That he has for and on behalf of Southern Railway Company paid during the year 1921 on the agreed assessed value of sixty million dollars to the Counties, cities, towns, and school districts within the State of North Carolina the total sum in taxes of $688,163.75. That the Southern Railway Company paid in the year 1920 in taxes to the said Counties, cities, towns, and separate school

districts the total sum of $652,900.49. In other words, due to increase in tax rates, the Southern Railway Company has
182 already paid on the sixty million dollar assessment the sum of $35,263.26 in excess of the amount paid in 1920 on the assessment of ninety-six million dollars; that the sum paid in 1921 will be increased by tax bills submitted by several Counties, cities, towns, and school districts, which have not been paid due to discrepancies therein, an added sum of $26,714.22; that the sum the Southern Railway Company will be required to pay if the ninety-six million assessment remains will amount to $1,243,715.97. In other words, the actual increase in taxes paid and to be paid over the year 1920 on the ninety-six million dollar assessment, if that remains, will be the sum of $368,622.38.

(5) That the Atlantic and Yadkin Railway Company has paid to Counties and municipalities for the year 1921 on the agreed assessment of $1,975,806.00 the sum of $22,086.18, whereas in 1920 it paid on an assessment of $4,104,710.00 the sum of $26,423.95. The reason for the amount paid in 1921, notwithstanding the reduced assessment is the very marked increase in tax rates. If the assessment of $4,104,710.00 remains, the Atlantic and Yadkin Railway Company will pay total taxes of $50,091.50.

(Signed) MURRAY R. HUBBARD.

Subscribed and sworn to before me this 24th day of January, 1922.

[SEAL.] (Signed) R. L. BLAYLOCK,
Clerk, U. S. District Court.

183 *Affidavit of A. H. Plant.*

Filed Jany. 24, 1922.

DISTRICT OF COLUMBIA,
City of Washington:

Before me, Harry K. Pimper, a Notary Public in and for said District, personally appeared A. H. Plant, who, being by me first duly sworn, on oath states:

That he is now and since March 1, 1920, has been Assistant to President of Southern Railway Company. From January 1, 1898, to June, 1918, he was the executive accounting officer of Southern Railway Company. From June, 1918, to February 29, 1920, he was Federal Auditor for the United States Railroad Administration and as such directed the accounting for operations of Southern Railway Company's properties, which, during that period, were operated by the United States Railroad Administration.

That as such executive accounting officer of Southern Railway Company, he formulated and prescribed the accounting methods of the said Railway Company and directed and supervised its accounts

in accordance with such methods as were formulated and prescribed by him.

That under the accounting rules so prescribed, the actual revenues derived from intrastate freight and passenger traffic within a given State can be and are determined, and that revenues derived from mail, express, and miscellaneous traffic can be apportioned
184 with a fair degree of accuracy as between intrastate and interstate.

That on such bases of accurate accounting and fairly accurate apportionment, the intrastate revenues within the State of North Carolina for the year ended December 31, 1920, were:

Freight	$3,029,323.99
Passenger	4,228,000.88
Mail	597,289.01
Express	368,556.00
Miscellaneous	335,219.37
Total	$8,558,389.25

That it has been found impossible, except at a prohibitive cost, to apportion in like manner operating costs to the two classes of traffic, that is to say, operating costs and taxes to do intrastate business and operating costs and taxes to do interstate business. Therefore, no effort has been made in the past to currently set up or apportion operating expenses and taxes separately to the two classes of traffic. On the other hand, under the accounting rules prescribed by him, operating expenses are assigned to each State, including the State of North Carolina, as a whole.

That upon such assignment it was found for the year 1920 that the cost to operate in North Carolina per dollar of both intrastate and interstate revenues earned within the State was 78.08 cents.
185 This 78.08 cents, however, does not fully represent the cost to earn a dollar of revenue within the State because the expenses incurred within the State are not charged with certain elements of costs incurred outside of the State which are properly chargeable to the revenues earned within that State.

That on various and sundry occasions it became necessary to determine as accurately as possible the operating costs to earn a dollar of intrastate revenue within the borders of certain States, among them the State of North Carolina. In order to do this, it became necessary to place on each train a special agent or auditor who made careful examination of each individual transaction handled by the trains and to set each transaction out and apply to it the cost incurred in handling such traffic. These examinations were made for the purpose of fixing as accurately as it could be fixed the relative costs per dollar of revenue on the two classes of traffic. The costs for this work exceeded something over $18,000.00 per month. The result of it was that it was found, not only in the State of North Carolina, but in other States, that the cost to earn a dollar of intrastate revenue within a given State was at least fifteen cents greater than the cost

to earn a dollar of revenue on both intrastate and interstate traffic. So that, if the aggregate cost to earn a dollar of both intrastate and interstate traffic in North Carolina be 78.08 cents, the cost to earn a dollar of intrastate revenue would be not less than 93.08 cents.

186 That by applying this per dollar cost of 93.08 cents to the total intrastate revenues earned within the State, namely, $8,558,389.25, would produce as a minimum intrastate expense, including taxes, within the State of North Carolina for the year ended December 31, 1920, $7,966,148.71, leaving as net from intrastate traffic within that State for the year before mentioned $592,240.54.

(Signed) A. H. PLANT.

Subscribed and sworn to before me this 20th day of January, 1922.

(Signed) HARRY K. PIMPER,

[SEAL.] *Notary Public, District of Columbia.*

187 *Affidavit of L. H. Skinner.*

Filed Jany. 24, 1922.

DISTRICT OF COLUMBIA,
City of Washington:

Before me, Harry K. Pimper, a Notary Public in and for said District and City, personally appeared L. H. Skinner, who, being by me first duly sworn, on oath states:

That he is at this time Purchasing Agent of Southern Railway Company and has been connected with the Purchasing Department of said Railway Company for sixteen years; that as such Purchasing Agent and through reports of other branches of the Purchasing Department of Southern Railway Company he has been and is familiar with the prices paid by Southern Railway Company for its materials and supplies.

That he attaches hereto a statement of the principal articles purchased by Southern Railway Company, which statement shows the unit prices of said articles May, 1920, compared with May, 1921; that a composite percentage of said articles and prices shows an average percentage of reduction May, 1921, under May, 1920, of 35 per cent.

That he has examined the Iron Age, a recognized publication, which set forth monthly an annual composite price list of iron and steel articles; that the Iron Age for January 5, 1922, on page 60, shows a composite price for pig iron for May, 1920, to have

188 been $43.64 per ton, and the like figure for May, 1921, to have been $22.78 per ton, or a percentage reduction of 47 per cent plus; that the said Iron Age of January 5, 1922, sets out the composite prices of finished steel products, which includes quotations on steel bars, beams, tank plates, plain wire, open-hearth rails, black pipe, and black sheets, in cents per pound to have been for May, 1920, 3.804, and for May, 1921, 2.764, or a percentage of reduction May, 1921, under May, 1920, of approximately 27½ per cent.

That the foregoing figures taken from the Iron Age bear out and corroborate the percentage of reduction given by him above on actual purchases made by Southern Railway Company.

(Signed) L. H. SKINNER.

Subscribed and sworn to before me this 19th day of January, 1922

(Signed) HARRY K. PIMPER,

[SEAL.] *Notary Public, District of Columbia.*

189 Ex. "A."

Memorandum of Prices for Materials Purchased by Southern Railway Company During May, 1920, and May, 1921.

Description.	Unit of price.	Price May, 1920.	Price May, 1921.
Roadway Materials:			
Steel Rails (open hearth)	Gross Ton	$47.60	$47.60
Track Spikes	Per Cwt	4.15	3.33
Track Bolts	"	5.25	4.15
Rail Joints (Weber 85 lb.)	Each	2.83	2.74
Spring Frogs (No. 19, 85 lb.)	"	128.60	92.30
Rigid Frogs (No. 10, 85 lb.)	"	80.76	59.40
Switches, Complete (85 lb.)	"	106.25	75.75
Switch Points (85 lb.)	"	52.35	42.20
Switchties, Oak	Per M Ft. BM	45.00	19.00
Switchties, Pine	"	50.00	18.75
Crossing Plank, Oak	"	50.00	30.00
Crossties	Each	1.33	.77
Bridge & Building Material:			
Bridge Ties & Guard Rail Pine, 8x10x11, 8x8x22	Per M Ft. BM	51.00	18.25 (E)
Stringers, Pine, 7x16x27	"	75.00	25.75 (E)
Sills & Posts, Pine—			
12x12x13' to 20'	"	57.56	21.25 (D)
12x12x22' to 30'	"	60.56	22.50 (D)
Bracing Pine, 3x10x24' to 30'	"	59.00	19.25 (E)
Creosoted Pine Lumber	"	89.50 (B)	49.25 (E)
Creosoted Pine Piles	Per Lin. Ft.	.56¾ (A)	.28
Shop Materials:			
Rolled Steel Coach Wheels (33").	Each	48.00	44.75
Locomotive Tires (rough bored).	Per Cwt	6.85	5.85
Springs (Coil)	"	5.15	3.90
Springs (Elliptic)	"	7.15	5.90
Car Couplers (5x7 base)	Per Pair	47.55	39.05
Steel Bars	Per Cwt	2.60	2.35
Steel Shapes	"	2.70	2.45
Steel Plates	"	2.80	2.45
Brass Castings	"	25.80	18.35
Journal Bearings	"	19.265	13.75
190 Malleable Castings (average)	"	12.00	8.80
Grey Iron Castings	"	3.90	4.25
Steel Castings (average)	"	7.00	8.25
Fuel Oil (in tank cars)	Gallon	.1057	.0393

Description.	Unit of price.	Price May, 1920.	Price May, 1921.
Shop Oak	Per M Ft. BM...	45.00	19.75
1" Boards, Pine	" ...	46.73	15.93 (D)
Car Sills 5½x9½x40' Pine	" ...	52.13	20.50 (C)
Car Siding	" ...	105.00	27.25
Car Lining & Roofing	" ...	68.75	21.50
Car Docking	" ...	48.00	17.90
Train Materials:			
Valve Oil (in tank cars)	Gallon	.655	.5625
Car Oil (in tank cars)	"	.335	.2475
Signal Oil (in barrels)	"	.70	.50
Illuminating Oil (in tank cars)	"	.16	.085
Packing Waste	Per Cwt.....	18.00	9.00

Where we did not make purchase of material in May the prices shown are based on month of nearest purchase.

(A) Based on June, 1920 price.
(B) " " August, 1920 price.
(C) " " April, 1921 price.
(D) " " June, 1921 price.
(E) " " July, 1921 price.

191 *Opinion.*

Filed March 18, 1922.

In the District Court of the United States.

In Equity.

SOUTHERN RAILROAD COMPANY, ATLANTIC AND YADKIN RAILWAY Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Norfolk-Southern Railroad Company

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, and Others.

Before Waddill, Circuit Judge; Boyd and Connor, District Judges.

Per Curiam:

Bills were filed in equity by the above named companies, to-wit: The Southern Railroad Company and the Atlantic and Yadkin Railway Company, in the United States District Court for the Western District of North Carolina and the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk-Southern Railroad Company, in the Eastern District of North Carolina, against the defendants A. D. Watts and A. D. Watts as Commissioner of Revenue, Baxter Durham, Auditor, Benjamin

R. Lacy, Treasurer, and James S. Manning, Attorney General of North Carolina, in which, for the causes therein set forth, they and each of them prayed for an interlocutory injunction restraining and enjoining the said defendants, in their individual and official capacity, from proceeding with the collection and the enforcement of payment against complainants, of certain taxes assessed or about to be assessed against complainants and their property, until
192 the final hearing of said causes for that, among other things alleged in the bills, the statutes of the State of North Carolina under, and pursuant to which, said taxes were assessed and sought to be enforced, were unconstitutional and void. Pursuant to the provisions of Section 266 of the Judicial Code, James E. Boyd, Judge of the Western District, called to his assistance in hearing said motions for interlocutory injunction in said causes, brought in the Western District, Edmund Waddill, Jr., Circuit Judge of the Fourth Circuit, and H. G. Connor, Judge of the District Court of the Eastern District of North Carolina, and H. G. Connor, Judge of the Eastern District, called to his assistance in hearing said motions, brought in the Eastern District, Edmund Waddill, Jr., Circuit Judge of the Fourth Circuit and James E. Boyd, Judge of the District Court of the Western District of North Carolina.

As required by the provisions of the statute, the said district judges in the causes pending in said District, made orders in which they directed the defendants to show cause, at a time and place therein named, why the interlocutory injunctions *w*hould not be granted as prayed for.

The motions in said causes were, by consent of the complainants and the defendants, by their attorneys, heard together, at Greensboro, North Carolina, on January 24th, 1922, when and where said judges being present said motions were heard upon the bills, answers, affidavits, exhibits and argument of counsel, for all parties in said causes.

The further consideration of the motions was, by consent of the counsel and order of the court, continued to Raleigh, North Carolina, on March 16, 1922, when and where said judges being present, proceeded to consider said motions upon the pleadings, affidavits, exhibits and briefs filed by Counsel.

It appears from the bills and answers that the said mo-
193 tions and prayer for final relief of complainants are based upon the following allegations and contentions.

(1).

That the property of complainants was not assessed in the same manner and by the same method as the property of the individual citizens of the state and that, the manner and methods by which complainants' property is appraised and assessed for taxation operates as an unjust and unlawful discrimination against complainants, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and that, thereby, complainants are deprived of their property without due process of law.

(2)

That the appraisal and assessment for taxation of the property of complainants are not made in accordance with the provisions of the Constitution and Statutes of the State of North Carolina and that said appraisal and assessment of taxes thereon are invalid.

(3)

That the appraisal of the value of complainants' property is in excess of its true value for the purpose of taxation as provided by the Constitution of North Carolina and is, therefore, invalid.

(4)

That the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States in the appraisal and assessment of complainants' property are violated, in that complainants' property, alleged by the State to be assessed at its true value for taxation, the property of other tax payers in the state, is appraised and assessed for taxation at less than its true value.

194 That the Franchise or Privilege Tax imposed upon complainants is invalid for that:

(1)

The ad valorem assessment is in excess of its true value for taxation and that the Franchise or Privilege Tax, based thereon, in accordance with the Statutes of the State, violates the Constitution of the United States and the State of North Carolina.

(2)

The Franchise or Privilege Tax is in truth and fact an ad valorem Tax and invalid, because not imposed upon the property of other citizens of the State.

(3)

That the Statute of North Carolina, under and pursuant to which the Franchise or Privilege Tax is imposed and sought to be enforced imposes a tax upon the privilege of doing business by complainants, both interstate and intrastate and is, therefore, a burden upon interstate commerce and thereby violates the Commerce Clause of the Constitution of the United States.

(4)

That, if the Franchise or Privilege Tax imposed upon complainants be valid, the method of ascertaining the value of complainants'

property as a basis for fixing the amount of said Franchise or Privilege Tax includes property of complainants used, as well in interstate as well as intrastate business and is, therefore a burden upon interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

The Court, after consideration of the bills, exhibits, affidavits and argument of counsel, is of the opinion that, for the purpose of this motion only, complainants have neither in their pleadings,
195 nor upon the proofs adduced, made such a case as to entitle them to have an interlocutory injunction in said causes as prayed for, and the motions for such interlocutory injunctions in respect to the ad valorem and the Franchise and Privilege Tax should not be granted and said motions and each of them are denied.

The Court being of the opinion that the contentions sought to be made by complainants in regard to the imposition and enforcement of the Income Tax against complainants, as provided by the Constitution of North Carolina, Article V, Section 3, as amended, and the statutes enacted by the Legislature pursuant thereto and for the enforcement thereof are not presented upon the bills and proofs herein.

The Court, therefore, does not pass upon, or express any opinion with respect to the validity of the Income Tax, or the Statutes enacted for its enforcement. Complainants may, in respect to such income tax, proceed without prejudice in such manner as they may be advised.

Let this opinion and a copy thereof, be filed and an order drawn and signed to be filed in the record in each of said causes in accordance therewith.

The further proceedings in said causes, in the Courts of the District, in which they are pending, will be had as provided by the Judicial Code and the course and practice of said courts. The costs of the motion will abide the final decrees in said causes.

At Raleigh, North Carolina.
This the 18th day of March, 1922.

EDMUND WADDILL,
United States Circuit Judge, Fourth Circuit.
JAS. E. BOYD,
U. S. District Judge, Western District of No. Ca.
H. G. CONNOR,
U. S. District Judge, Eastern District of No. Ca.

196 *Order.*

Filed March 18, 1922.

In the United States District Court for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This cause came on this eighteenth day of March, 1922, before the United States District Court for the Western District of North Carolina, held by the undersigned three United States Judges sitting pursuant to the provisions of Section 266 of the Judicial Code, to be heard upon a motion for an interlocutory injunction to enjoin and restrain the State of North Carolina from collecting certain taxes enumerated in the complainant's bill, which motion was heard and considered upon the pleadings, and the affidavits filed respectively by the complainant and the defendants, and was argued by counsel. Whereupon the court composed of the three judges sitting as aforesaid, having filed an opinion denying the right of the complainant to have an interlocutory injunction, it is, for reasons stated in writing in said opinion filed in this cause, and pursuant thereto, adjudged, ordered and decreed that said injunction so prayed for, be and the same is hereby refused and denied. And it is further ordered that the defendants shall not proceed to enforce the
197 collection of taxes involved in this litigation, for the period of thirty days from the date of this order, to the end that the complainant may take such action in the premises as it is advised to

EDMUND WADDILL, JR.,
United States Circuit Judge,
Fourth Judicial District.

JAS. E. BOYD,
United States District Judge,
Western District of North Carolina.

H. G. CONNOR,
United States District Judge,
Eastern District of North Carolina.

197½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue, et al., Defendants.

Petition for Appeal to the Supreme Court of the United States and Assignments of Error.

S. R. Prince,
Solicitor for Complainant.
L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
C. O. Amonette,
Of Counsel.

198 *Petition for Appeal.*

Filed March 31, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue, et al., Defendants.

To the Honorable James E. Boyd, District Judge of the United States for the Western District of North Carolina:

The Southern Railway Company, the above named complainant, feeling aggrieved by the order of the court, consisting of Circuit Judge Waddill and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code of the United States, entered in the above entitled cause on the 18th day of March, 1922, refusing

and denying the interlocutory injunction applied for in this
199 cause to restrain the defendants, until the cause could be heard on its merits, does, as provided in Section 266 of the Judicial Code of the United States, hereby appeal to the Supreme Court of the United States from the order refusing and denying the interlocutory injunction applied for upon the grounds set forth in the assignments of error filed herewith, and complainant prays that its appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said appeal is based, duly authenticated, be sent to the Supreme Court of the United States, under the rules of such court in such cases made and provided.

And complainant further prays that the court enter an order continuing in effect the thirty day stay granted by the court in the order entered March 18, 1922, until the appeal herein prayed for shall have been heard, passed upon and disposed of by the Supreme Court of the United States.

SOUTHERN RAILWAY COMPANY,
By S. R. PRINCE,
Solicitor.

200 In the Dist. Court of the U. S. for the Western Dist. of N. C.

In Equity.

No. 261.

SOUTHERN RY. CO., Complainant,

vs.

A. D. WATTS & A. D. WATTS, as Comr. of Rev., et al.

Assignments of Error.

Filed Mch. 31, 1922.

Now comes the complainant, in the above entitled cause, and in connection with its petition for appeal from the order entered March 18, 1922 (by the court convened under Section 266 of the Judicial Code of the United States), denying the motion for interlocutory injunction, files the following assignments of error:

The Court erred:

(1) In decreeing that the interlocutory injunction be denied.

(2) In holding that for the purpose of the motion for an interlocutory injunction only, complainant neither in its pleadings, nor upon the proof adduced, is entitled to have the interlocutory injunction applied for.

(3) In failing to hold that the assessment of complainant's property for taxation is in excess of its "true value" in money for the purpose of taxation as required by the Constitution of North Carolina and is therefore invalid.

(4) In failing to hold that the appraisal of complainant's property for taxation is not made in accordance with the provisions of the Constitution and Statutes of North Carolina, and that said appraisal and assessment of taxes are invalid and illegal.

201 (5) In failing to hold that the property of complainant was illegally assessed, in that the plan of valuation followed to arrive at the assessment complained of imported into the State of North Carolina values which are elsewhere, and that such plan so followed violates the Commerce Clause of the Constitution of the United States.

(6) In failing to hold that the manner and method by which complainant's property was assessed is illegal and operates as an unjust and unlawful discrimination against complainant in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and that thereby complainant is deprived of its property without due process of law and denied the equal protection of the law.

(7) In failing to hold that the action of the Commissioner of Revenue, in declining to make a reduction in the value of complainant's property commensurate with the horizontal reductions made by the taxing authorities under the North Carolina law permit-ing such reductions on other property generally, was unjust discrimination, contrary to the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States.

(8) In failing to hold that the Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment to the
202 Constitution of the United States are violated, in that complainant's property is alleged by the State to be assessed at its true value for taxation, while the property of other taxpayers generally in the State is appraised and assessed for taxation at less than its true value in money and that this appraisal and assessment of the property of other citizens and taxpayers of the State has been long continued and is arrived at under a scheme of taxation which shows intent to place an undue burden of taxation upon complainant and its property.

(9) In failing to hold that the scheme of taxation of the State of North Carolina and the assessment of the properties of the various classes of taxpayers is by settled purpose and intent so designed and carried out that, while the property of complainant is assessed at its true value in money, or more than its true value in money, the large proportion of the property in the State is assessed at less than its true value in money, thereby casting an undue and excessive burden upon complainant, in violation of the Uniformity Clause of the Constitu-

tion of the State of North Carolina and in violation of the Fourteenth Amendment to the Constitution of the United States.

(10) In failing to hold that the ad valorem assessment being in excess of true value for taxation, the so-called Franchise tax
203 based thereon violates the Constitution of North Carolina and the Constitution of the United States.

(11) In failing to hold that the so-called Franchise or Privilege tax is in truth and in fact an additional ad valorem or property tax upon complainant's property and is illegal and invalid because levied for the support of the State and is not levied equally upon the property of other citizens and taxpayers of the State and the enforcement of such void statute deprives complainant of its property without due process of law, contrary to the Constitution of the United States.

(12) In failing to hold that the so-called Franchise or Privilege tax is under the statute imposed as a license or privilege tax for the privilege of engaging in inter and intrastate commerce and is, therefore, a burden upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

(13) In failing to hold that if the Franchise or Privilege tax be imposed for the privilege of engaging in intrastate commerce, it is measured in part by the value of the privilege of engaging in interstate commerce, in that it is based upon the entire value, including values derived from use in interstate commerce, and is, there-
204 fore, a burden imposed upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

(14) In failing to hold that if the so-called Franchise or Privilege tax is imposed for the privilege of engaging in intrastate commerce, the tax should have been assessed against complainant upon one-half of the ad valorem value, as provided in Section 82 (3½) of the Revenue Act of North Carolina of 1921, and that the tax assessed against complainant upon the full value of its property is, therefore, contrary to law and void.

(15) In failing to hold that the payment of the so-called Franchise or Privilege tax is enacted as a condition precedent to the right of complainant to do "any business" in the State, whether interstate or intrastate, and, therefore, unconstitutional and void.

(16) In failing to hold that the assessment made is void, in that it includes in the value used as a basis for arrival at the Franchise or Privilege tax the value of property not used in the business for which the privilege is exacted and such law and the enforcement thereof in the manner set forth violates the Fourteenth Amendment to the Constitution of the United States.

(17) In failing to hold that the tax system of the State of North Carolina, which includes an ad valorem tax on the full value
205 of its property in the State, including as a part thereof value it has due to its use in interstate commerce, plus a Franchise

or Privilege tax upon the full value of the said property for ad valorem purposes, plus an income tax of three per cent on its net operating income, does in practical operation result in a burden upon interstate commerce and violates the Commerce Clause of the Constitution of the United States.

Wherefore, plaintiff prays that the decree be reversed and that the court may be directed to enter a decree allowing the interlocutory injunction.

S. R. PRINCE,
Solicitor for Complainant.

L. E. JEFFRIES,
MANLY, HENDREN & WOMBLE,
A. B. ANDREWS,
C. O. AMONETTE,
Of Counsel.

206 *Notice of Application of Southern Railway Company for Stay of Proceedings and Order.*

Filed March 31, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

To the defendants in the above entitled action and Honorable James S. Manning, Attorney General of North Carolina, and Frank Nash, Assistant Attorney General, Solicitors for defendants.

You will please take notice that on Friday March 31st, 1922, at 10.00 o'clock A. M., or as soon thereafter as counsel may be heard, the above named complainant will apply to His Honor, James E. Boyd, United States District Judge for the Western District of North Carolina, at office in Greensboro, N. C., for an order allowing the complainant to appeal to the Supreme Court of the United States and granting a stay of proceedings until the appeal shall have been heard, passed upon and disposed of by the Supreme Court of the United States.

SOUTHERN RAILWAY COMPANY,
By S. R. PRINCE,
Solicitor.

207 *Order Continuing Petition for Appeal and for Stay.*

Filed March 31st, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS, and A. D. WATTS, as Commissioner of Revenue, et al., Defendant-.

The petition of complainant for appeal and for an order staying the proceedings pending appeal came on to be heard this date, and, upon application of defendants for a continuance, it is ordered that the petition for appeal and for stay be and it is continued to 10 A. M., April 10, 1922, at Greensboro, N. C.

JAS. E. BOYD,
U. S. Judge.

March 31, 1922.

208 *Order Allowing Appeal & Fixing Bond.*

Filed April 10, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS, and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This matter coming on to be heard on the application of complainant for an appeal to the Supreme Court of the United States, under Section 266 of the Judicial Code of the United States, from the decree entered in this cause on the 18th day of March 1922, refusing and denying the interlocutory injunction applied for; and upon the assignment of errors filed in said cause and presented to the Court with the said application for appeal and for an order con-

tinuing in effect the thirty day stay granted by the Court in this case in its order entered March 18, 1922, until the appeal prayed for shall have been heard, passed upon and disposed of by the Supreme Court of the United States;

And all parties being represented by counsel now before the Court on due notice.

It is ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the order and decree filed and entered herein on the 18th day of March 1922, refusing and denying the interlocutory injunction prayed for, upon the giving of bond in the sum of $1,000.00.

It is further ordered that citation of appeal issue and be served upon the defendants or their attorney of record, and that the Clerk of this Court prepare and forward to the Supreme Court of the United States a transcript of the record of the proceedings, pleadings, affidavits, etc., upon which the judgment herein was rendered, duly authenticated.

209 The Court being of the opinion that the application to continue in effect the thirty day stay granted March 18, 1922 by the Court, consisting of Circuit Judge Waddill and District Judges Connor and Boyd, should more properly be heard and passed upon by the three judge court, that part of the petition of complainant is not now ruled upon, but is continued for hearing before the three Judges on a date to be later fixed, and the appeal hereinbefore allowed is without prejudice to complainant as to time of the hearing of the matter of further stay asked for.

This 10th day of April 1922.

JAS. E. BOYD,
U. S. Judge.

210 *Appeal Bond.*

Filed April 10th, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

SOUTHERN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Know all men by these presents: That we, the Southern Railway Company, a corporation organized and existing under the laws of the State of Virginia, as principal, and Fidelity and Deposit Company of Baltimore Md., as surety, are held and firmly bound unto the above named A. D. Watts, and the other defendants in the sum of One thousand ($1,000.00) Dollars, to be paid to the said A. D. Watts and other defendants, their successors or assigns; to which payment well

and truly to be made, we bind ourselves and our successors jointly and severally by these presents.

Sealed with our seals and dated this 10th day of April, 1922.

Whereas in a suit pending in the District Court of the United States for the Western District of North Carolina between Southern Railway Company, Complainant, and A. D. Watts et al., defendants, a decree was rendered by the court, consisting of Circuit Judge Waddill, and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code, denying the complainant an
211 interlocutory injunction as prayed for, and the Southern Railway Company having prayed and been allowed an appeal under Section 266 of the Judicial Code of the United States, direct to the Supreme Court of the United States, and filed a copy thereof in the Clerk's Office of the said Court, and citation having issued, directed to the said A. D. Watts et al., citing and admonishing them to be and appear in the Supreme Court of the United States within the time required by law.

Now, the condition of the above obligation is such, that if the said Southern Railway Company shall prosecute its said appeal to effect, and answer all damages and costs if it fails to make its appeal good, then the above obligation to be void; else to remain in full force and effect.

SOUTHERN RAILWAY COMPANY,
By S. R. PRINCE,
General Solicitor.
FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,
EDWARD CARPENTER,
Attorney-in-Fact. [SEAL.]

Approved this 10th day of April, 1922.

JAS. E. BOYD,
U. S. District Judge.

212 *Citation and Acceptance of Service.*

Filed April 10, 1922.

UNITED STATES OF AMERICA:

The President of the United States to A. D. Watts and A. D. Watts, as Commissioner of Revenue, et al., Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be holden at the City of Washington, on the 8th day of May next, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Western District of North Carolina, wherein Southern Railway Company is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said appeal mentioned, should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand in the City of Greensboro, N. C., in the District above named, this 10th day of April 1922.

JAS. E. BOYD,
Judge of the District Court of the United States for the Western District of North Carolina.

Service of within citation accepted for all defendants April 10th, 1922.

A. D. WATTS,
Commissioner of Revenue, and other Defendants.
By WM. P. BYNUM,
Attorney.

213 *Stipulation of Counsel.*

Filed April 13, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

SOUTHERN RAILWAY COMPANY, Complainant,

—

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

It is stipulated and agreed by and between the parties to the above entitled cause;

That the Clerk, in making up the transcript of record on this appeal from the Order denying complainant's motion for an interlocutory injunction, shall include therein all pleadings, orders, motions, stipulations, affidavits and exhibits, constituting the entire record before the Court, except there may be omitted from the record the following:

(1) Exhibit A to the Additional Affidavit of M. R. Hubbard, which exhibit was a printed copy of the Rules of the Interstate Commerce Commission Governing Separation of Operating Expenses of Railways and Railway Accounting as Prescribed by the Interstate Commerce Commission.

(2) The Clerk shall not include as a part of the transcript the individual affidavits of the Registers of Deeds of the 100 Counties in the State of North Carolina, together with the tabulated lists of conveyances recorded from January 1, 1921 to June 30, 1921, and setting forth opposite each conveyance the consideration in the deed and the assessed value for taxation of the property conveyed.

(3) Return of the service of the notice of the hearing on plaintiff's application for an interlocutory injunction.

(4) Return of the service of the writ upon the various defendants.

(5) Statement attached to McCarthy's affidavit consisting of name of stock or bond par value, and market value, and total mar-
214 ket value for the years 1917, 1918, 1919, 1920, and 1921. The purpose here being to have in this transcript the affidavits as it was printed for the hearing before the three-judge Court.

The Clerk shall include as a part of the transcript one of said affidavits, to-wit: that of B. M. Rogers, Register of Deeds for Alamance County, N. C., together with the tabulated statement of deeds recorded and the deed value of each parcel conveyed and the assessed value for taxation of each parcel so conveyed, this one being typical of all as to the form and character of information contained therein. It is unnecessary to set forth the individual affidavits of deed and tax value taken from the records of each separate County in the State, because the information shown on said separate affidavits, containing the deed value of separate conveyances and a comparison of the tax assessment of each said parcel, is summarized in the affidavit of C. J. O'Brien, which is to be included in the transcript.

It is further stipulated that the Clerk may use in preparing the record on appeal printed copies of all such pleadings, documents, affidavits etc., as may be furnished by the parties hereto.

S. R. PRINCE,
Solicitor for Complainant.
JAMES S. MANNING,
Attorney General of N. C.,
Solicitor for Defendants.
FRANK NASH,
Assistant Attorney General.

215 *Order Denying Stay and Granting 30 Days to Make Application to Supreme Court.*

Filed April 18, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 163.

SOUTHERN RAILWAY COMPANY, Plaintiff,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This matter coming on to be heard at Raleigh, North Carolina, on April 15, 1922, on the application of plaintiff for an order con-

tinuing in effect the thirty day stay granted by the Court in this case in its order entered March 18, 1922, until the appeal heretofore taken shall have been heard, passed upon, and disposed of by the Supreme Court of the United States, and all parties being represented by counsel now before the Court;

The Court, being of the opinion that the application to continue in effect the thirty day stay granted March 18, 1922, until a review and decision can be had by the Supreme Court of the United States on the appeal heretofore taken from the order of this Court, denying the interlocutory injunction, should be presented to the Supreme Court of the United States, denies the application for continuance of said stay until the appeal is decided by the Supreme Court of the United States.

And it appearing to the Court that the hearing of this application has been delayed through no fault of plaintiff's, and the Court being of the opinion that the status quo should be continued until the application for restraint pending the appeal can be made to and decided by the Supreme Court of the United States, Orders that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order.

EDMUND WADDILL, JR.,
U. S. Circuit Judge, Fourth Judicial Circuit.

JAS. E. BOYD,
U. S. District Judge, Western District of North Carolina.

H. G. CONNOR,
U. S. District Judge, Eastern District of North Carolina.

216 *Order to Transmit Record.*

And thereupon it is ordered by the Court here, that a transcript of the record and proceedings in the cause aforesaid together with all things thereunto relating be transmitted to the said Supreme Court of the United States of America, and the same is transmitted accordingly.

R. L. BLAYLOCK,
Clerk,

By H. M. CAUSEY,
Deputy Clerk.

Clerk's Certificate.

UNITED STATES OF AMERICA:

In the District Court for the Western District of North Carolina.

I, R. L. Blaylock, Clerk of the District Court of the United States, for the Western District of North Carolina, do hereby certify that the above and foregoing is a full, true, and complete copy of the record, according to the Stipulation of Counsel hereto attached as appears from the original papers and records in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, at office in the City of Greensboro, in said District, on this the 18th day of April A. D. 1922.

[Seal of the United States District Court, Western Dist. of N. C.]

R. L. BLAYLOCK,
Clerk U. S. District Court,
By H. M. CAUSEY,
Deputy Clerk.

Endorsed on cover: File No. 28,882. W. North Carolina D. C. U. S. Term No. 368. Southern Railway Company, appellant, vs. A. D. Watts and A. D. Watts, as commissioner of revenue, et al. Filed April 25, 1922. File No. 28,882.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1922

No. [redacted]369

ATLANTIC AND YADKIN RAILWAY COMPANY, APPELLANT,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

FILED APRIL 26, 1923.

(28,383)

(28,883)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 928.

ATLANTIC AND YADKIN RAILWAY COMPANY, APPELLANT,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

INDEX.

	Original.	Print.
Proceedings in the district court of the United States for the western district of North Carolina	1	1
Caption	1	1
Bill of complaint	2	2
Application for interlocutory injunction	26	15
Order on application	29	17
Notice of hearing on application	31	18
Subpœna	33	19
Motion to dismiss bill	34	19
Order overruling motion to dismiss	35	20
Order allowing motion for leave to amend	36	21
Amendment substituting E. A. Brady, tax collector, instead of J. R. Steele	38	22
Consent decree	39	23
Answer	41	25
Exhibit A—Statement of taxable values, 1919-1920	73	46

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 16, 1922.

	Original.	Print.
Affidavit of Murray R. Hubbard	79	53
Motion to amend bill and order denying same	84	56
Amendment to bill	85	57
Affidavit of Murray R. Hubbard	89	60
A. H. Plant	107	69
J. B. Duke	118	74
C. E. A. McCarthy	130	79
T. H. Gatlin	132	80
R. E. Johnson	136	83
W. C. Idol	137	84
V. A. J. Idol	138	84
Frank Wineskie	140	85
Guy E. Wells	141	86
J. E. Kirkman	142	86
Harry Raymond	143	87
W. H. Slave	145	87
R. T. Amos	146	88
Wallace B. Davis	147	89
S. M. Hanes	148	89
R. H. Edwards	149	90
Geo. D. Bizzell	150	90
Fred R. Mintz	151	90
Members of the tax commission	152	91
A. J. Maxwell	160	96
Stidman Thompson	161	97
Exhibit Letter and statement of suggested distribution of assessments	162	98
Affidavit of Murray R. Hubbard	163	100
A. H. Plant	167	102
L. H. Skinner	171	103
B. M. Rogers	175	106
Exhibit A—Statement of assessment values	176	107
Affidavit of C. J. O'Brien	178	112
Per curiam opinion	182	118
Decree	187	121
Petition for appeal	189	123
Assignments of error	191	124
Notice of application for stay	197	127
Order continuing petition for appeal and for stay	198	127
Order allowing appeal and fixing bond	199	128
Bond on appeal	201	129
Citation and service	203	130
Stipulation as to transcript	204	131
Order denying stay and granting 30 days in which to make application to Supreme Court	206	132
Order to transmit record	207	133
Clerk's certificate	207	133

1 UNITED STATES OF AMERICA,
Western District of North Carolina:

At a District Court of the United States of America for the Western District of North Carolina Begun, Opened, and Held on the 18th Day of March, A. D. 1922.

Present: Hon. Edmund Waddill, Jr., Circuit Judge, and Hon. H. G. Connor and Hon. Jas. E. Boyd, District Judges, when and where the following proceedings were had, to-wit;

In Equity.

262.

ATLANTIC & YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

1½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC AND YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

Bill of Complaint.

S. R. Prince, Solicitor for Plaintiff.
L. E. Jeffries, Manly, Hendren & Womble, Wilson & Frazier, of Counsel.

2 *Bill.*

Filed Sept. 22, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

ATLANTIC AND YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Atlantic & Yadkin Railway Company, a corporation chartered and existing under and by virtue of the laws of the State of North Carolina, brings this its bill of complaint against A. D. Watts, individually and as Commissioner of Revenue of the State of North Carolina, and a citizen of North Carolina, with his residence at Statesville, in the County of Iredell, State of North Carolina, in this Judicial District of the United States; Baxter Durham, Auditor of the State of North Carolina; Benjamin R. Lacy, Treasurer of the State of North Carolina, and James S. Manning, Attorney General of the State of North Carolina, citizens of the State of North Carolina;

George W. Flynt, Sheriff of Forsyth County, North Carolina;
David B. Stafford, Sheriff of Guilford County, North Carolina;
3 J. A. Brady, Sheriff of Randolph County, North Carolina;
A. P. Sands, Sheriff of Rockingham County, North Carolina;
W. L. Alberty, Sheriff of Surry County, North Carolina;

citizens of the State of North Carolina and inhabitants of the Western United States Judicial District thereof; and

G. W. Blair, Sheriff of Chatham County, North Carolina;
L. C. Rosser, Sheriff of Lee County, North Carolina;
E. O. Shelton, Sheriff of Stokes County, North Carolina;
citizens of the State of North Carolina; and

the following citizens of North Carolina, who hold the offiec of Tax Collector of the city or town of North Carolina set opposite their respective names, and each of whom is sued as such Tax Collector:

H. I. Carter, Bonlee;
S. C. Trogden, Franklinville;
H. P. Goldston, Goldston;
J. M. Reese, Liberty;

H. R. Martin, Madison;
R. V. Byerly, Mount Airy;
W. J. Simmons, Pilot Mountain;
J. R. Steele, Ramseur;
F. R. Thompson, Staley;
T. G. Rumbly, Stokesdale;
C. L. Gunter, Sanford;
J. J. Jenkins, Siler City.

4 Plaintiff respectfully represents and shows:

1. That it is a corporation of the State of North Carolina engaged in the business of a common carrier of freight and passengers in North Carolina, qualified to so engage under the laws of North Carolina. The line of railroad which it operates extends through eight counties of the State of North Carolina, with a mileage of 161.08 miles, all in North Carolina. It, in connection with other carriers is engaged in the transportation of goods and persons in interstate commerce from points within the State of North Carolina to points without, and from points without the State of North Carolina to points within the State.

2. This suit arises under the Constitution of the United States and the amount involved in this suit, exclusive of interest and costs, is in excess of three thousand dollars ($3,000).

3. Plaintiff shows that the tax sections of the Constitution of North Carolina and the plan of taxation now in force in the State of North Carolina, as applicable to this plaintiff and other railroads in the State, are as follows:

(*a*) Section 3 of Article 5 of the Constitution of North Carolina provides in part as follows:

"Sec. 3. Taxation Shall Be by Uniform Rule and ad Valorem; exemptions.—Laws shall be passed taxing, by uniform rule, all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise; and, also, all real and personal property, according to its true value in money * * * The General As-
5 sembly may also tax trades, professions, franchises, and income," etc.

Section 6 provides:

"Sec. 6. Taxes Levied for Counties.—The Total of the State and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or a general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by article nine, section three, of the constitution: Provided, further, the State tax shall not exceed five cents on the one hundred dollars value of property."

Section 9 of Article 7 provides:

"Sec. 9. Taxes to be ad Valorem.—All taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same, except property exempted by this constitution."

(*b*) Prior to the first day of May, 1921, the Commissioners, selected from time to time under authority of law to establish the North Carolina State Tax Commission, constituted a Board of Appraisers and Assessors for railroad companies and other companies exercising the right of eminent domain.

6 (*c*) Under an Act of the Legislature of North Carolina, ratified March 8, 1921, Public Laws of North Carolina, Session 1921, page 288, the powers and duties of the State Tax Commission were transferred to and imposed upon the Commissioner of Revenue.

(*d*) Under Sections 62, 62(*a*), and 63 of the Act of the Legislature of North Carolina, approved March 8, 1921, page 225 of the Public Laws of North Carolina, Session 1921, at page 263 (hereinafter referred to as the Machinery Act), it is provided that railroad companies file certain returns.

(*e*) Under Section 64 of said Machinery Act, it was made the duty of the Commissioner of Revenue at such dates as real estate is required to be assessed for taxation, to first determine the value of the tangible property of each division or branch of such railroad, of rolling stock, and all other physical or tangible property.

Section 64 then provides:

"This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case of private property."

Section 64 also provides:

"They (referring to the State Tax Commission, for which was thereafter substituted the Commissioner of Revenue as set forth above) shall then assess the value of the franchise, which
7 shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property."

Section 64 also provides:

"The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the property for the purpose of an ad valorem taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof; and the State Tax Commission shall certify, on or before the first day of September, to the chairman of the county commissioners and the mayor of each city or incorporated town the amount apportioned to his county, city, or town;"

(*f*) Section 65 of the Machinery Act provided for a proportional valuation of interstate railroads in the proportion which the length of the main line of road in the State of North Carolina bears to the whole length of such main line of road, and to determine the value in the State of North Carolina accordingly. Said section contained the following proviso:

8 "Provided, the commission shall, in valuing the fixed property in this State, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this State, and any other factor which would give a greater or less value per mile of road in this State than the average value for the entire system. On or after the first Monday in July the said commission shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said commission may, if they see fit, require all argument and communications to be presented in writing."

(*g*) Section 82 (6½) of an act entitled, "An Act to Raise Revenue," approved March 8, 1921, page 147, of the Public Laws of North Carolina, Session 1921, at page 193, provides as follows:

"Railroads.—Every railroad company doing business in this State shall annually on or before the thirtieth day of July make and return to the State Tax Commission, in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require, for the purpose of carrying out the provisions of this section, and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon
9 which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this State shall be found to be the value of the property, tangible and intangible, of each such railroad company in the State assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this State shall

be one-tenth of one per cent (0.1%) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make the report provided for, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city, or town shall be allowed to collect any taxes under this section."

(*h*) The State of North Carolina levies also an income tax as provided in the Income Tax Act of 1921, which levies upon the net income for the calendar year 1921 taxes as set forth in said act, page 203, of the Public Laws of North Carolina, Session 1921, amounting to three per cent (3%) on the net income of this corporation.

4. For the year 1919 the ad valorem assessment of plaintiff's property was $1,975,806.00. In 1920 the State Tax Commission under the Revaluation Act (Chapter 84, Public Laws of North Carolina, 1919) increased the assessment of said property for 1920 to $4,104,710.00 and plaintiff paid 1920 taxes thereon under written protest. In 1921 the Revenue Commissioner assessed said property for ad valorem taxes at $4,104,710.00, being the same amount as 1920. A hearing was had before the Revenue Commissioner and facts adduced showing that said valuation was in excess of the true "actual value" of the property as the said term is defined in Section 28 (*e*) of the Machinery Act, reading in part as follows:

"The words 'actual value,' as used in the several subdivisions of this section, shall be held to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and deemed to mean what the property would bring at cash sale when sold in such manner as such properties are usually sold."

This hearing resulted in the Revenue Commissioner adhering to the assessment of plaintiff's property at $4,104,710.00. The Plaintiff petitioned the Commissioner of Revenue for a review of the assessment of its property by the State Board of Equalization. The Revenue Commissioner, under advice of the Attorney General, held that the plaintiff and other railroads had no appeal to the State Board of Equalization or any other body, but he reheard the matter himself and declined to change said assessment.

5. Plaintiff shows that the assessment of its properties for 1921 as above set forth is in excess of the "true value" in money of said properties for tax purposes as the same is defined in Section 28 (*e*) of the Machinery Act. Neither the Tax Commission nor the Revenue Commissioner advised plaintiff at what sum the tangible property of plaintiff was assessed, as is provided in Section 64 of the Machinery Act. Neither the State Tax Commission nor the Revenue Commissioner advised plaintiff at what sum it or he

assessed the value of the franchise of plaintiff. Plaintiff was advised that the aggregate value of the physical or tangible property of this plaintiff and the franchise for 1921 was $4,104,710.00 for the purpose of ad valorem taxation. Plaintiff in 1920 was advised by the Tax Commission that it found the average net income (deducting operating expenses and taxes within North Carolina from operating revenue within North Carolina) of Southern Railway Company's lines, including this plaintiff and other independently operated lines, for the five years 1915-1919 to be $6,117,625.00. This sum, capitalized at six per cent, produced $101,960,413.00, which amount the State Tax Commission found to be the value for ad valorem purposes of Southern Railway Company, and Atlantic & Yadkin Railway Company, High Point, Randleman, Ashboro & Southern Railroad Company, and Yadkin Railroad Company, independently operated roads. This assessment was found to be approximately 107.8% in excess of the 1919 assessment of all
12 of said properties and the method of apportioning the assessment to this plaintiff was by taking the 1919 assessment of $1,975,806.00 and adding thereto approximately 107.8% thereof, which made the 1920 assessment $4,104,710.00, and inasmuch as the Revenue Commissioner has assessed the said property for 1921 at the same figure, it is stated that if the Commissioner used any method, the method employed was the same as that for 1920 above stated.

Plaintiff was in 1919 and is now a separate corporate entity from Southern Railway Company, separately operated, and an assessment cannot be legally arrived at to its prejudice by lumping it with Southern Railway Company and other lines. The illegality of the assessment so arrived at was accentuated and the damage increased because the total assessment so arrived at, from which the per cent of increase was found, was itself illegal and a gross overassessment, as will appear from the bill filed in this Honorable Court by the "Southern Railway Company vs. A. D. Watts, as Commissioner of Revenue et al.," to have said assessment against it declared illegal, and leave is prayed to refer to said bill as often as need be in this cause.

Plaintiff avers that in pursuing the above method of valuing plaintiff's property, the Commissioner of Revenue acted without warrant of law to plaintiff's great damage, and the assessment so arrived at is illegal and the exaction of taxes based thereon deprives plaintiff of its property without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States
13 and the uniformity section of the North Carolina Constitution.

6. Plaintiff avers that the said assessment for 1921 of $4,104,710.00 is an overassessment of plaintiff's property, and is in excess of its true value for tax purposes, as defined by the laws of North Carolina, for the following reasons:

(1) Plaintiff avers that a statement of its operating results for the last five-year period, which statement was filed with the Commissioner of Revenue, is as follows:

Year to Dec. 31.	Gross operating revenue.	Operating expenses and taxes.	Net operating income or deficit.	
1920	$857,657.39	$1,022,326.91	$164,674.52	Deficit
1919	763,862.07	921,314.67	157,447.60	"
1918	614,031.54	691,111.78	77,080.24	"
1917	496,206.53	520,908.28	24,701.75	"
1916	456,773.99	439,366.83	17,407.16	Income
Total 5 years..	$3,188,531.52	$3,595,028.47	$406,496.95	Deficit
Average	637,706.30	719,005.69	81,299.39	Deficit

Plaintiff avers that the foregoing statement, which shows an average deficit for the five years of eighty-one thousand dollars, excludes the idea of arriving at a proper assessment of this company's property by the capitalization of net income. Notwithstanding this, because this company's property, together with the property of other companies, showed that there was a net income for all of them, the capitalization of which produced an increase of 107.8%, the Revenue Commissioner arbitrarily increased this company's assessment by 107.8%, which action was illegal.

14 (2) This company has a capital stock of $1,000,000.00 and a First Mortgage Bond issue of $1,500,000.00, making a total capitalization of $2,500,000.00. No dividends upon the capital stock have been paid or declared in recent years. It is not believed that this company's stock and bonds have any such market value as would result in a fair assessment by calculating the value of the property by a use of what is known as the stock and bond method, but if wrong in this, it avers that the fair market value of its capital stock and bonds would not exceed $1,750,000.00.

(3) The amount of property, investment in road and equipment as of December 31, 1919, of this road, filed with the Interstate Commerce Commission under Section 15 (*a*) of the Commerce Act, was $2,690,349.00. Defendant avers that its property account is not a proper criterion of the value of its property, but this figure is stated to show how unreasonable and excessive is the assessment complained of.

(4) Plaintiff avers that the Bureau of Valuation of the Interstate Commerce Commission has found as a tentative value of the cost of reproduction new of its said properties $3,282,353.00, and the reproduction cost less depreciation of said properties to be $2,693,272.00. If there be added to this the value of the lands which is not included, the maximum value of which is alleged to be not in excess of $193,298.00, we have a total value of $2,886,570.00. Plaintiff does not concede that the valuation found by the Interstate Com-

merce Commission for rate making purposes under the In-
14a terstate Commerce Act is the true value for tax purposes required by the Constitution and laws of North Carolina, but it is advised and states that wherever railroads have been able to show to the Commissioner of Revenue the tentative value as fixed by the Interstate Commerce Commission, the Commissioner of Revenue has recognized the same and the recognition thereof resulted in the reduction of the assessed value of said railroads many millions of dollars. It is averred that the true value of plaintiff's property for tax purposes under the laws of North Carolina is not as much as the total value so arrived at. Plaintiff alleges the amount of illegal taxes it will be required to pay on the old tax rates (which have been increased) will be in excess of $15,000.00, unless the collection thereof be restrained.

(5) Plaintiff avers that the Government of the United States, which took control, use, and operation of plaintiff's line under the Act of Congress known as the Federal Control Act and held it during the period of Federal control of railways, declined to pay any sum for the use of said railroad, that is, it was shown that instead of the owners making any profit from said road during the test period there was an annual deficit of $57,477.72, which deficit, as is shown above, has gradually increased.

(6) Plaintiff avers that no evidence, report, or statement before the Revenue Commissioner justified a finding that plaintiff's
14b property had any intangible or franchise value to be added to the tangible value to make the total value for ad valorem purposes, and that its property has not any intangible value.

Plaintiff therefore alleges that said assessment violates Section 3 of Article 5 of the Constitution of North Carolina, and to exact taxes thereon would deprive plaintiff of its property without due process of law and violate the Fourteenth Amendment to the Constitution of the United States.

(7) Plaintiff shows that the assessment made against it in 1920 was accepted under protest and the tax paid under protest, and that it has never recognized or admitted the correctness of any such assessment.

(8) Plaintiff shows that Section 28 (*a*) of the Machinery Act reads as follows:

"The board of county commissioners and the county board of appraisers and review, heretofore appointed under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen (any vacancy which may have occurred to be filled by appointment of the board of county commissioners), shall meet jointly in each county on the first Tuesday after the first Monday in April, one thousand nine hundred and twenty-one, as a county board of review, to determine if the value of real property as heretofore appraised and assessed in the county as a whole is in excess of the fair value of such property at the time of meeting of such board.

The chairman of the board of county commissioners shall be
15 the chairman of the county board of review as thus constituted, and the clerk of the board of county commissioners shall be secretary of the said board. The said board shall make proper inquiry and investigation into the existing values of real property as compared with the assessed and appraised values thereof in the several cities, towns, and townships of the county; and if it shall find that the assessed value of such property is in excess of the actual value, it shall find the average percentage of such excess in the county as a whole, or in the several cities, towns, and townships, and shall report its finding so made to the State Tax Commission not later than the twentieth day of April, one thousand nine hundred and twenty-one. The values so reported shall be the values at which the property shall be assessed for taxation, unless and until the same have been changed and revised by the State Tax Commission and certified to the board of county commissioners of such county, which shall be done not later than the first day of July, one thousand nine hundred and twenty-one."

Acting under said Section 28 (*a*), the respective County Boards of Review of the counties through which plaintiff operates made the following horizontal reductions in the percentage set opposite each in the assessed value in the said counties as a whole of real property assessed by said County Boards:

16 Name.	Per cent reduction.
Chatham	Equalization
Forsyth	0
Guilford	0
Lee	33-1/3
Randolph	33-1/3
Rockingham	25
Stokes	33-1/3
Surry	25

and upon report of their action to the State Board of Equalization, the assessments so horizontally reduced were not revised or changed by the State Board of Equalization and remain the value at which the real property other than that of railroads is now assessed.

The assessment of 1920 was by legal presumption at true value, in fact it was in excess of true value. The assessment of other property was by like legal presumption at true value. The County Boards made a horizontal systematic reduction, the Commissioner of Revenue made no similar reduction on plaintiff's property,—result discrimination and violation of the Constitution of North Carolina and of the Constitution of the United States.

Plaintiff avers that the Commissioner of Revenue, in fixing the assessment herein complained of, declined to consider or to give to plaintiff the benefit of any similar horizontal reduction in the right of way lands and structures thereon of plaintiff situated in said

respective counties, or to make any reduction in its assessment, and that this declination on the part of the Commissioner of
17 Revenue is a discrimination violative of Section 3 of Article 5 of the Constitution of North Carolina and violative of the Fourteenth Amendment to the Constitution of the United States, now especially pleaded and relied upon.

The result is that while other taxpayers generally will, due to decrease in assessment and increase in rate, pay no more, if as much, tax as last year, the plaintiff will, due to increase in rate, pay on the same assessment, it is estimated, an increased tax of approximately $7,500.00.

(9) Plaintiff is advised and, on information and belief, states that the tax rate either has been or will be materially increased in said counties in order that the amount of needed revenue may be raised. The result is that the assessment of plaintiff's property remains practically the same, whereas the assessment of other property is reduced. The causes which brought about a reduction in value of real estate in the counties in which the reduction was made apply with even greater force to plaintiff's property. The reduction in value has not been confined to real property of individuals, but applies alike to real estate of plaintiff and other railroads and to the property generally of plaintiff. Plaintiff avers that the reduction being horizontal, shows that it was not based upon any reduced value of any particular piece of real estate or upon facts individual to any individual taxpayer, but is due to general conditions applicable alike to all and should, therefore, be applied alike to all and
18 plaintiff should derive the benefit thereof, and its failure to receive the benefit thereof is contrary to Section 3, Article 5, of the North Carolina Constitution and to the Fourteenth Amendment to the Constitution of the United States.

(10) Plaintiff recognizes that values of other property in North Carolina are depressed and that there was doubtless just ground for a reduction in taxable values, but it shows that its values are largely dependent upon the values of other property in the State and its business fluctuates with the prosperity of the States it serves, including North Carolina, and it is common knowledge and a fact that plaintiff's property, like other railroad property, and the value of the use thereof, has been very greatly depressed in 1921 and, therefore, a commensurate reduction in its taxable values should have been made, and the failure to do so is discrimination and contrary to the uniformity clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States.

(11) Plaintiff avers that under the scheme of laws provided by the State of North Carolina, all taxpayers other than railroads and others assessed by the Revenue Commissioner have the right to appeal to and the duty of equalization is placed upon the State Board of Equalization consisting of three individuals. That prior to 1921 the railroad assessments were fixed by a board of three, known as the State Tax Commission, but under the law of 1921 the assess-

ment is fixed by the Revenue Commissioner and the law does
19 not provide, as was the legislative intention under the hereto-
fore recognized policy of the State, for any appeal from this assessment fixed by the one individual. This is a denial of the equal protection of the law and of the uniformity clause of the North Carolina Constitution.

(12) Plaintiff further shows that the so-called Franchise Tax is not a franchise tax measured by the value of the use of the property, but is in truth and in fact an ad valorem tax based on the value of the property. This being true, and it being further true that said so-called Franchise Tax is levied only upon corporations, the result is that this ad valorem tax is not levied equally upon all property holders in the State and is, therefore, contrary to Section 3 of Article 5 of the Constitution of North Carolina, and by reason of the enforcement thereof plaintiff is deprived of the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States. This Franchise Tax is one-tenth of one per cent (0.1%) on the assessed value of the property for ad valorem purposes, and, therefore, the fixing by the Revenue Commissioner of a sum greatly in excess of the true value for ad valorem purposes is doubly iniquitous and damaging because that excessive assessment is also used as the basis for the illegal so-called Franchise Tax.

Plaintiff's property is assessed for ad valorem purposes at the sum of $4,104,710.00, and on that sum it pays to each county the assessed rate of that county, just as other property holders do.
20 In addition to that, it pays to the State, under the guise of a franchise tax, one-tenth of one per cent (0.1%) on that same ad valorem value.

Plaintiff further avers that this so-called Franchise Tax violates the uniformity section of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States in that as to all other corporations it is measured by the capital stock, whereas as to railroads it is based upon the ad valorem value for taxation.

(13) Plaintiff further shows that the system of pyramiding taxes, as is evidenced by the tax laws of the State of North Carolina set forth above, including the income tax of three per cent (3%) on the net income, is a direct burden on interstate commerce contrary to the Constitution of the United States.

(14) Plaintiff avers that said assessment was improperly made and is not according to law and is excessive, oppressive and illegal and there was not before the Commission of Revenue any competent evidence to sustain it.

(15) Plaintiff shows that it will owe to the State, counties and municipalities the legally enacted tax upon whatever may be found to be the legal assessment of its property for taxes in the State of North Carolina, and inasmuch as it has no desire to embarrass the State, counties and municipalities in the collection of the revenue to

which they may be entitled, it expresses a willingness, if any
21 plan may be devised under which it may legally do so, to pay, at the time the same may come due according to law, the taxes based upon a certainly legal assessment of its property.

(16) Plaintiff avers that notice of the herein complained of assessment, dated August 27th, was received by plaintiff August 29th, and while the preparation of this bill was in progress it was advised that said assessment had been on September 2, 1921, certified to the State Auditor and to the several counties and municipalities in the State of North Carolina in which plaintiff's lines are subject to tax. Plaintiff has, therefore, joined as parties defendant hereto the State Auditor and the State Treasurer, who, under the law, respectively charge for collection and receive payment of the franchise tax, and the Sheriff of each county in which plaintiff has property, upon whom the law places the duty of collecting the county taxes levied upon said illegal assessment, and the City or Town Tax Collector of each incorporated city or town in which plaintiff has property, upon each of whom the law imposes the duty of collecting the city or town taxes on said illegal assessment, and unless said officers are joined in this suit, plaintiff will be required to institute a number of suits, all of which will involve the same and the one question of the validity of said assessment made by the Commissioner of Revenue. The assessment is made as an entirety by the Revenue Commissioner and by him apportioned to the several counties and municipalities of the State. The Boards of County Commissioners
22 and the Chairmen of the County Commissioners and the Mayor of each incorporated city and town do not make the assessment and are not empowered to change the same. They are required by law to assess against this railroad on the proportion of said invalid assessment so certified to it or him the tax imposed for county, township, city or other tax district purposes and levied on other property.

Unless the tax collecting officers of the several counties and municipalities are restrained, they will proceed under the law to collect the tax on the illegal assessment, which tax becomes due on the first Monday in October. Under the law of North Carolina, the taxes so assessed in behalf of the State, counties, towns and cities, if not paid, will under the Statutes of North Carolina become a first lien upon the property of the plaintiff in North Carolina and will be a cloud upon the title to said property, and if said taxes are not paid as assessed, the penalties as provided by law will attach and its property will be sold for the taxes, all to the great damage of plaintiff for which it has no adequate remedy at law.

Prayer.

Wherefore, and for as much as plaintiff is remediless in the premises, according to the common law, and remediable only in equity, and that plaintiff may not be subjected to a multiplicity of suits which would otherwise develop, and may not suffer irreparable in-

jury and damage, and may be permitted to pursue and carry
23 on its business without unlawful hindrance and destruction,
and that the railroad by plaintiff operated in the State of North Carolina as aforesaid and its other property herein may not be subjected to illegal liens and clouds, plaintiff prays for a writ of subpœna to issue against the defendants and each and every one of them named and described as aforesaid, to appear and full and true answer make to this bill of complaint, and that said defendant A. D. Watts state in his answer the method whereby he reached the so-called final assessment, but not under oath, answer under oath being hereby waived, and that said defendants, and each and every one of them, be enjoined by final decree and, meanwhile, by a preliminary injunction as follows, to wit:

That said A. D. Watts, as the Commissioner of Revenue of North Carolina, be enjoined and restrained from certifying to the State Auditor the said illegal ad valorem assessment as the value upon which shall be calculated the amount of taxes which plaintiff shall pay as a franchise or privilege tax.

That Baxter Durham, as Auditor of North Carolina, be enjoined and restrained from charging to plaintiff for collection and that Benjamin R. Lacy, as State Treasurer, be enjoined and restrained from collecting from the plaintiff the franchise or privilege tax on the assessment herein complained of until the final order of this Court.

That James S. Manning, as Attorney General of North Carolina,
be enjoined and restrained from instituting or authorizing the
24 institution of any suit or proceedings to collect any tax based
upon said illegal assessment until the final order of this Court.

That each of the defendant sheriffs aforesaid of the respective counties be enjoined and restrained from collecting or taking any steps to collect from plaintiff upon the proportion of said assessment apportioned to and certified by the Revenue Commissioner as being apportioned to his county, any and all taxes levied thereon for county, township, or other taxing district purpose until the final order of this court.

That each of the defendant city or incorporated town Tax Collectors of the respective cities and towns aforesaid be enjoined and restrained from collecting or taking any steps to collect from plaintiff upon the proportion of said assessment apportioned to and certified by the Revenue Commissioner to the respective Mayors of said cities and towns as being apportioned to his respective city or town, any and all taxes levied thereon for city, town, or other municipal purpose until the final order of this court.

That on final hearing the Revenue Commissioner be enjoined and commanded to cancel the illegal assessment aforesaid and to withdraw from the several Chairmen of the County Commissioners and the Mayors of each city or incorporated town to which certificate of a proportion thereof has been made and from all others to whom cer-
tificate thereof has been made, the certificate thereof so made.
25 Plaintiff further prays that the tax statutes of North Carolina herein alleged to be unlawful be decreed by this Court to be unconstitutional and invalid, and that no assessment for tax-

ation be made against plaintiff thereunder, and no tax be levied against or collected from plaintiff thereunder; and for all such other, further, general, and special relief as in equity it may be entitled to.

This is the first application for injunction in this cause.

S. R. PRINCE,
Solicitor for Plaintiff.

L. E. JEFFRIES,
MANLY, HENDREN & WOMBLE,
WILSON & FRAZIER,
Of Counsel.

DISTRICT OF COLUMBIA,
City of Washington:

F. S. Wynn, being duly sworn, deposes and says that he is Vice-President of Atlantic and Yadkin Railway Company, the above-named plaintiff, which is a corporation; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

F. S. WYNN.

Subscribed and sworn to before me this — day of ——, 1921.

HARRY K. PIMPER,
Notary Public, District of Columbia.

26 *Application for Interlocutory Injunction.*

Filed Sept. 30, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

ATLANTIC AND YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Comes the above-named plaintiff and shows the Court:

That it has instituted in this Court by bill of complaint an action against A. D. Watts, as Commissioner of Revenue of the State of North Carolina, and other defendants as shown in said bill which is now referred to and made a part of this application, the object and purpose of the action being to secure from this Honorable Court an order enjoining preliminarily and perpetually the defendants, who

are tax assessing, collecting, and enforcing officers of the State of North Carolina and its municipal subdivisions, from collecting or instituting proceedings to collect State, county, municipal, or other taxes levied upon or based upon an illegal overassessment of plaintiff's property, made and certified to them by the Revenue Commissioner of North Carolina, which assessment is contrary to the Constitution and laws of North Carolina and the Constitution of the United States. The bill alleges and set forth the grounds
27 of unconstitutionality of the assessment and of the statutes of North Carolina under which said invalid assessment was made and under which the illegal taxes will be collected by the defendants named in said bill unless restrained by this Honorable Court, all of which is more fully alleged, set out, and explained in the bill of complaint filed herein.

Plaintiff alleges that the franchise tax levied under Section 82 of the Revenue Act of North Carolina, ratified March 8, 1921, is unconstitutional and that no tax can be levied thereon under any assessment, and the action of the State's tax collecting officer in the execution of said void statute is sought to be enjoined. Said tax is due and payable on or before the 15th day of October, 1921, and if not paid by December 1, 1921, a penalty of ten per cent (10%) is added to such tax.

The ad valorem taxes levied by the counties on said illegal assessment is due on the first Monday in October, and unless paid, the Sheriff may levy and sell property of this plaintiff after November 1, 1921.

The municipal and other taxes levied upon said illegal assessment will become due and the collection thereof will be undertaken prior to the determination of this cause unless the tax collecting officers are restrained.

Wherefore, application is made under Section 266 of the Judicial Code for an interlocutory injunction as prayed for in said bill, and this Court is petitioned to call to his assistance to hear and
28 determine this application two other judges, and that the statutory notice of the hearing of this application be given the Governor and the Attorney General of the State of North Carolina and each of the defendants to the said bill, and an order issue requiring the defendants to show cause at the time and place to be fixed by this Court according to law why said interlocutory injunction should not issue as prayed for.

This application is based upon the verified bill of complaint on file herein.

S. R. PRINCE,
Attorney for Plaintiff.

29 *Order for District Judge on Application for Interlocutory Injunction.*

Filed Sept. 30, 1921.

In Equity.

No. —.

ATLANTIC AND YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The application for an interlocutory injunction was presented to me this — day of —, 1921; and having read and considered the verified bill filed in this cause, and the application for a hearing for interlocutory injunction under Section 266 of the Judicial Code, and being advised that for the reasons set forth in said application and upon the grounds stated therein and in the verified bill, plaintiff is entitled to have its application heard under Section 266 of the Judicial Code:

It is ordered, that the application be filed and a hearing of the application for an interlocutory injunction be had and proceeded with in accordance with Section 266 of the Judicial Code as amended by Act of Congress approved March 14, 1913, and such hearing is set down for October 6, 1921, at the United States Court rooms in the city of Greensboro, North Carolina, at 11 o'clock A. M.

It is further ordered, that notice of said hearing, not less than five days, shall be given to the Governor and the Attorney General of the State of North Carolina, and to each of the defendants
30 to this suit. And I hereby call to my assistance at said hearing of said application the Honorable Edmund Waddill, Circuit Judge of this Circuit, and the Honorable Henry G. Connor, District Judge of the Eastern District of North Carolina.

This Sept. 30", 1921, at Greensboro, North Carolina.

JAS. E. BOYD,
District Judge.

31 *Notice of Hearing of Application for Interlocutory Injunction under Judicial Code, Section 266.*

Filed Sept. 30, 1921.

In Equity.

No. —.

ATLANTIC AND YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

To Honorable Cameron Morrison, Governor of the State of North Carolina; Honorable James S. Manning, Attorney General of the State of North Carolina; Honorable A. D. Watts, Revenue Commissioner of the State of North Carolina: Honorable Baxter Durham, Auditor of the State of North Carolina; Honorable Benjamin R. Lacey, Treasurer of the State of North Carolina: and to each of the defendants named in the above bill:

You, and each of you, are hereby notified that the Atlantic & Yadkin Railway Company, plaintiff, has filed its verified bill of complaint in the District Court of the United States for the Western District of North Carolina against A. D. Watts, Revenue Commissioner, et al., praying an injunction against the named tax assessing, collecting and enforcing officers of the State of North Carolina and its municipal subdivisions from collecting or instituting proceedings to collect State, county municipal or other taxes levied upon
32 or based upon the alleged illegal overassessment of plaintiff's property for the year 1921, made and certified to by the Revenue Commissioner of the State of North Carolina, and also praying that certain tax laws of North Carolina be declared unconstitutional, as will appear from the bill filed herein.

In this cause plaintiff has made application for an interlocutory injunction under Section 266 of the Judicial Code of the United States. The application for such interlocutory injunction will be heard in the United States District Court, in the city of Greensboro, North Carolina, on the 6th day of October, 1921, at 11 o'clock A. M., and you, and each of you, are notified to appear at said time and place and show cause, if any, why the interlocutory injunction prayed for should not be granted.

Done in open court this 30″ day of Sept., 1921.

JAS. E. BOYD,
Judge.

33 *Subpœna.*

Issued Sept. 30, 1921.

UNITED STATES OF AMERICA,
Western District of North Carolina, ss:

The President of the United States of America, to —— ——, Greeting:

You are hereby commanded to appear before our District Court of the United States of America for the Western District of North Carolina, at Greensboro in said District, within twenty days after the service of this subpœna upon you, exclusive of the day of such service, to answer the bill of complaint of the Atlantic & Yadkin Railway Company this day filed in the Clerk's Office of said Court in Greensboro, North Carolina, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

For the Marshal of the United States for the Western District of North Carolina to execute.

Witness the Honorable James E. Boyd, Judge of the District Court of the United States of America for the Western District of North Carolina, and the seal of said court hereunto affixed.

Issued at Greensboro in said District, this 30 day of Sept. 1921.

[SEAL.] R. L. BLAYLOCK,
Clerk.

34 *Motion to Dismiss Bill.*

Filed Octo. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILROAD COMPANY, Plaintiff,

vs.

A. D. WATTS et al., Defendant.

Motion.

Come now the defendants A. D. Watts and others named as defendants in the complaint filed in this suit, and move the Court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss this suit, because it is conceded in the complaint that the plaintiff owes and is liable to pay the defendants' taxes

on property situated within the State of North Carolina and in the several counties named in the complaint and in the several cities, towns and taxing districts named in the complaint property of the value of $2,690,349.00, on which said property the plaintiff, as it appears in its said complaint has not paid or tendered payment of the taxes due thereon.

JAMES S. MANNING,
Attorney General of N. C.;
FRANK NASH,
Asst. Attorney General,
Solicitors of the Defendants.

GEO. H. BROWN,
LOCKE CRAIG,
WM. P. BYNUM,
KING, SAPP & KING,
Of Counsel.

35 *Order Denying Motion to Dismiss.*

Filed Octo. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC AND YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The defendants this date moved the Court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss the suit upon the grounds stated in said motion.

Upon consideration thereof, the Court denies the motion to dismiss the suit.

In appearing to the Court that the application for a preliminary injunction has been continued by agreement of parties, which agreement has been filed in this cause, and it further appearing that by said stipulation the plaintiff agrees to pay the taxes which may come due as they come due to the counties, cities, towns, and other taxing districts of the State of North Carolina on the valuation stated in the stipulation filed herein this date.

EDMUND WADDILL, JR.,
U. S. Circuit Judge.
JAS. E. BOYD,
H. G. CONNOR,
U. S. District Judge.

36 *Order Allowing Motion for Leave to Amend Complaint by Adding Thereto Sec. 12½, and Amendment.*

Filed Octo. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY CO.

vs.

A. D. WATTS and A. D. WATT, as Commissioner of Revenue, et al.

The plaintiff this date moved the Court for leave to amend the complaint herein by adding thereto Section 12½, on page 33 of the bill. Upon consideration thereof, it is ordered that the motion be allowed and the amendment be filed.

JAS. E. BOYD,
Judge.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY CO.

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Comes, the plaintiff and shows to the Court that since the filing of its bill in this cause on the 30th day of September 1921. Honorable Baxter Durham, State Auditor, under date of Sept. 22nd, certified to plaintiff, which certification was received on September 24th 1921, the so-called franchise or privilege tax assessed under the provisions of Section 82 (6½) of the Revenue Laws, Chapter 34, North Carolina Public Laws of 1921, demanding payment of the aggregate amount of $4,104.71, this sum being one-tenth of one per cent
37 on the aggregate assessed valuation for ad valorem purposes of $4,104,709.00, as fixed for the year 1921 by the Commissioner of Revenue.

Wherefore, plaintiff moves the Court to enter an order permitting plaintiff to amend its complaint by adding thereto the following Section 12½, on page 21, of said complaint.

"12½. Plaintiff further shows that even if the said so-called franchise tax of one-tenth of one per cent is not illegal and void as a franchise tax but should be decided by the Court to be a valid tax, nevertheless plaintiff is entitled to the relief prayed because the State Auditor has demanded of plaintiff as a franchise tax for the year 1921 the sum of $4,104.71, which is one-tenth of one per cent of the aggregate assessed valuation of plaintiff of $4,104,709.00, fixed for the year 1921 by the Commissioner of Revenue for ad valorem purposes, whereas under the provisions of Sec. 82 (3½) of the Revenue Act of North Carolina of 1921 plaintiff should be required to pay only upon one-half of such value for the reason that the proportion of the capital stock of plaintiff, a domestic corporation, reported to North Carolina is less than one-half of the assessed value for taxation of all the property of plaintiff in North Carolina for the year 1921. This demand made by the State Auditor of the plaintiff if enforced denies to plaintiff the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and violates the Uniformity Clause of Section 3, Article 5, of the Constitution of North Carolina. And plaintiff prays the Court, if the said so-called franchise tax should be held valid, to decree that plaintiff's franchise tax shall be calculated with reference to the sum of one-half of the total assessed value of all the property of plaintiff in North Carolina." S. R. PRINCE,
Solicitor for Plaintiff.

As Counsel for defendants, consent is given to the above amendment, and this may be taken as acceptance of service of the amendment. WM. P. BYNUM,
Counsel for Defendants.

38 *Amendment Substituting E. A. Brady, Tax Collector, in Place of J. R. Steele.*

Filed Octo. 10, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY COMPANY
vs.
A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Comes the plaintiff and moves the Court to enter an order permitting plaintiff to amend its complaint filed in this cause in the following particular:

That J. R. Steele, one of the defendants, sued as Tax Collector of the Town of Ramseur, North Carolina, be stricken as defendant

and that E. A. Brady, the present Tax Collector of Ramseur be substituted as defendant.

S. R. PRINCE,
Solicitor for Plaintiff.

As Counsel for defendants, consent is given to the above amendment, and this may be taken as acceptance of service of the amendment.

WM. P. BYNUM,
Counsel for Defendants.

The above motion for leave to amend is granted, and it is ordered that the amendment be filed.

JAS. E. BOYD, *Judge.*

39 *Consent Decree.*

Filed Octo. 6, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY CO.

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The following stipulation is entered into between counsel for Plaintiff and the Attorney General of North Carolina and his associates as counsel for all defendants, for each of which defendants they have entered an appearance;

It is agreed that in order that the defendants may have sufficient time in which to prepare the defense, the application for an interlocutory injunction under Section 266 of the Judicial Code is, with the consent of Court, continued until such date as the Court may select following January 1, 1922.

The foregoing continuance being agreed upon and it appearing that before the hearing and determination of the application certain taxes will come due to the State of North Carolina and to the counties, cities, towns and other taxing districts; Therefore it is agreed by the Attorney General of North Carolina and his associates as representing all of the defendants, that if the Atlantic & Yad. Railway Co. pays the taxes it agrees hereinafter to pay, then no further or other taxes sought to be enjoined in the bill will be demanded or collected or any action or suit of any character begun to collect or any penalty assessed for the non-payment thereof, until the further order of the Court or pending this action.

The Atlantic & Yadkin Railway Co. agrees that it will pay when due in accordance with the laws of the State of North Carolina to all counties, cities or towns, special school districts, or other special taxing districts all taxes that may be due such county, city, special school or other special taxing districts of the State, on its proper proportionate share of an aggregate ad valorem assessment against plaintiff of $1,975,806.00.

The Attorney General of North Carolina agrees that he will take all necessary action to have the Commissioner of Revenue certify to the several counties and taxing districts of North Carolina their proper proportion of an assessment of $1,975,806.00, as soon after the date hereof as may be practicable and, if possible, within such period as will enable the Railway Company to take advantage of any discount that it may be entitled to under the law.

It is agreed between the parties that the Atlantic & Yadkin Railway Co. is not to demand a receipt in full for its 1921 taxes in consideration of the payment it makes, but is to receive a receipt for the amount of the taxes paid, and the amount of taxes so paid shall be in full of said taxes due if an assessment shall be finally fixed at a sum not in excess of $1,975,806.00, or such payment shall be a credit upon all taxes that may be due if the assessment of plaintiff's property for ad valorem tax purposes for the year 1921 shall be finally fixed in excess of said $1,975,806.00.

It is further agreed that if defendants desire to file an answer prior to the hearing of the application for an interlocutory injunction they shall file such answer or any motion or other pleading they desire to file by December 1, 1921, and furnish opposing Counsel with copies thereof, Plaintiff shall have until December 24th 1921, to file any motion or reply pleading and any affidavits in support of bill or motion for interlocutory injunction or in reply and furnish opposing Counsel with copies thereof. Defendants shall have until January 10, 1922, to file affidavits in support of their answer or in reply and plaintiff shall have until hearing to file reply affidavits.

This stipulation to become effective and filed in this Court upon approval hereof by the Court.

At Greensboro, N. C., this 6th day of October 1921.

S. R. PRINCE,
MANLY, HENDREN & WOMBLE,
A. B. ANDREWS,
Attys. for Plaintiff.
JAS. S. MANNING,
Attorney General of No. Ca.;
GEO. H BROWN,
WM. P BYNUM,
KING, SAPP & KING,
Counsel for Defendants.

Approved Octo. 6, 1921.
EDMUND WADDILL, JR.,
U. S. Circuit Judge.
JAS. E. BOYD,
H. G. CONNOR,
U. S. District Judges.

40½ In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 262.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

Answer.

James S. Manning,
Attorney-General;
Frank Nash,
Assistant Attorney-General,
Solicitors for the Defendants.

W. P. Bynum,
George H. Brown,
Locke Craig,
Thomas D. Warren,
Sidney S. Alderman,
Of Counsel.

41 *Answer.*

Filed Nov. 30, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY

against

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et als.

Answer.

Come now A. D. Watts and the other defendants in the above-entitled suit and, answering the complaint filed by the plaintiff therein, say:

1. The allegations of article one are admitted, except the allegation that the plaintiff is not a citizen of the State of North Carolina, which is denied; on the contrary it is averred that the plaintiff was at all times mentioned in the complaint, and is now, a corporation duly

created and existing under and by virtue of the laws of North Carolina, and by said laws was consolidated with the corporations of North Carolina and Virginia hereinafter mentioned, and is a citizen of North Carolina and of the Eastern District thereof, with its principal place of business at Wilmington in said State.

The plaintiff company was consolidated with the Wilmington and Weldon Railroad Company, Petersburg Railroad Company, and other companies chartered under laws of North Carolina, said consolidation being had under the general authority of this State as follows, Chapter 294 of the Private Laws of 1893, which act contained this proviso: "Provided, that this act shall not have the effect of ousting the jurisdiction of the courts of this State over causes of action arising within the State;" Chapter 105, Private Laws 1899, which contained these provisions:

42 Provided, further, that any and all corporations consolidated, leased or organized under the provisions of this act shall be domestic corporations of North Carolina and shall be subject to the laws and jurisdiction thereof.

"Sec. 2. That authority is hereby given to the said Wilmington and Weldon Railroad Company at any meeting of its stockholders, by a majority vote thereof, to change its name to the Atlantic Coast Line Railroad Company of North Carolina."

At the same session of the Legislature, Chapter 77, Public Laws of 1899, the following statute was enacted:

An act to ratify the consolidation of the Petersburg Railroad Company with the Richmond and Petersburg Railroad Company, under the name of the Atlantic Coast Line Railroad Company of Virginia, and to incorporate the said Atlantic Coast Line Railroad Company of Virginia in North Carolina.

Whereas the Richmond and Petersburg Railroad Company, a corporation created by the laws of the State of Virginia, has, by virtue of the power given by an act of the General Assembly of Viginia, approved March the first, eighteen hundred and ninety-eight, acquired the ownership of all the property, rights, and franchises of the Petersburg Railroad Company, including that portion thereof which is located in this State, and the said Richmond and Petersburg Railroad Company and Petersburg Railroad Company have become consolidated under and upon the terms of said act, and such consolidated company has, by virtue of the authority given in said act, changed its name to the Atlantic Coast Line Railroad Company of Virginia: now, therefore,

The General Assembly of North Carolina do enact:

Section 1. That the purchase by the said Richmond and Petersburg Railroad Company of that portion of the roadbed and other property, rights and franchises of the Petersburg Railroad Company which are in the State of North Carolina, is hereby ratified and approved.

43 Sec. 2. That the Atlantic Coast Line Railroad Company of Virginia, a corporation created by and existing under the laws of the State of Virginia, is hereby created a body politic and corporate in the State of North Carolina under and by the aforesaid name of the Atlantic Coast Line Railroad Company of Virginia, and by such name may sue and be sued, may adopt a common seal and change the same at will, and have all the general powers and be subject to all the general restrictions granted and imposed by the laws of this State to and upon railroad companies.

Sec. 3. The said Atlantic Coast Line Railroad Company of Virginia is hereby authorized and empowered to maintain and operate the railroad which formerly belonged to the Petersburg Railroad Company in this State, and is hereby given all the rights, powers, and privileges, and made subject to all the restrictions, except the restriction as to the term to which its charter is limited, granted and imposed by the charter of the said Petersburg Railroad Company or any amendments thereto in the State of North Carolina.

Sec. 4. The powers given by this act to the Atlantic Coast Line Railroad Company of Virginia are granted upon the express condition that the property of the said Atlantic Coast Line Railroad Company of Virginia in this State shall always be liable to taxation under the Constitution and laws of this State, and that said company shall be subject to the tariffs, rules and regulations prescribed by the Board of Railroad Commissioners.

Sec. 5. This act shall be in force from and after its ratification.

The plaintiff accepted the benefits conferred upon it by the private acts above referred to, and also those contained in the above-quoted act of 1899, the railroads in North Carolina permitted by the General Assembly to consolidate with it having become under these acts a part of its system, and thus absorbed by it; and said plaintiff cannot now be heard to say that it is not bound by the restrictive provisions while it holds to the benefits conferred by those acts.

Since the enactment of the statutes above mentioned and the acceptance by the plaintiff of the benefits thereunder, it has
44 been uniformly held by the Supreme Court of North Carolina to be a corporation of this State.

The allegations of article one as to the mileage of the plaintiff in this State is admitted, except that the allegation therein that the mileage of railroad owned, operated, leased and controlled by the plaintiff in North Carolina is 1,043.79 miles is true only as to the first main lines of the plaintiff's roads in this State and does not include the mileage of second main lines and sidetracks, which, added to the mileage of the first main lines, increase the mileage of lines of railroad owned, operated, leased and controlled by the plaintiff in this State to 1,419.65 miles instead of 1,043.79 miles. Nor does this latter figure include the so-called independent lines returned and reported by the plaintiff to the Revenue Commissioner as required by law, all or a majority of the stock of which is owned by the plaintiff, thus giving it absolute control of those lines also. The mileage of these last named lines is 199.76 miles, which, added to

the mileage of the other lines, makes a total mileage of railroad owned, operated, leased and controlled by the plaintiff in North Carolina of 1,619.41 miles. The plaintiff has a double track on its main line running from Richmond, Virginia, through the State of North Carolina to Florence, South Carolina.

2. The allegations of article two are admitted, but the name of the defendant Watts is Alston D. instead of Augustus D., as alleged.

3. The allegations of article three are denied, except it is admitted that this is a suit in equity, and that the amount in controversy, exclusive of interest and costs, exceeds the sum and value of three thousand dollars.

4. The allegations of article four are admitted.

5. The allegations of article five and the subsections thereof are admitted, except as hereinafter stated.

Section 64 of the Machinery Act of 1921, referred to in subsection (*e*) of article five, did not make it the duty of the Commissioner of Revenue to do the things therein stated, but made it the duty of the State Tax Commission. Subsequently, there was enacted a separate statute, ratified March 8, 1921, being Public Laws, Session 1921, page 388, whereby the powers and duties of the State Tax Commission were transferred to and imposed upon a newly created officer to be called the Commissioner of Revenue. That statute, however, and the said Section 64 of the Machinery Act of 1921, of which it was amendatory, did not require the Commissioner of Revenue to assess the properties of railroads for taxation for the year 1921 or for any year thereafter until 1924. The State Tax Commission had made the assessment of railroad properties in North Carolina for taxation for 1920, and the said assessment had been approved by the General Assembly of North Carolina in its Extra Session of 1920, Public Laws 1920, Chapter 1, and adopted as the basis for taxation for the years 1920 to 1923, inclusive. The only power with reference to assessments of railroad properties prior to 1924, given to the Commissioner of Revenue by the Public Laws of 1921, was the power to review the State Tax Commission's assessment of railroad properties, given by the Machinery Act of 1921, Section 28 (*g*).

The said section 65 of the Machinery Act referred to, and the proviso thereof quoted in subsection (*f*) of article three of the complaint, is the statute particularly controlling the assessment for taxation of the properties of railroads doing interstate commerce, operating both within and without the State.

Section 82 (6½) of the Revenue Act of 1921, referred to and quoted in subsection (*g*) of article three of the complaint, was first enacted by the General Assembly in the Extra Session of 1920, Public Laws 1920, Chapter 1, Section 7 (*d*), and was carried forward without change in the said Revenue Act of 1921. The said Section

82 (6½) was a substitute for Sections 77 and 78 of the Rev-
46 enue Act of 1919, which imposed a privilege tax on railroads for the privilege of doing intrastate commerce within North Carolina, based on gross earnings per mile within the State. This tax levied by the said Sections 77 and 78 of the Revenue Act of 1919 had existed in the laws of North Carolina for many years, in addition to ad valorem taxation. The said Section 82 (6½) substituted for the old privilege tax based on gross earnings per mile a new form of privilege or franchise tax upon all railroads, for the privilege of doing intrastate business within North Carolina, based on the total properties of each said railroad within the State as assessed under the Machinery Act for ad valorem property taxation.

It is admitted that Section 82 (3½) of the Revenue Act of 1921 is as quoted in subsection (*h*) of article five of the complaint, but it is denied that the same has any application to railroad corporations. It applies only to those corporations upon which are levied the special privilege tax based on capital stock provided for in Section 82, Subsections 1, 2, 3, 4, 5, 6, 7, 8, and 9, and has no application to the franchise or privilege tax on railroads provided for by Section 82 (6½), as hereinafter alleged.

The allegations of subsection (*h*) of article five, as to income tax against railroads, are admitted; but it is alleged that the said income tax is not only levied upon railroads, but is also levied in the same way upon all corporations doing business in North Carolina, foreign and domestic, railroad corporations and others, equally and without discrimination.

6. The allegations of article six are admitted.

7. The allegations of article seven are admitted.

8. The allegations of article eight are admitted, but the defendants aver that the plaintiff had no legal grounds for making such protest. Its taxes paid in North Carolina in 1920 were actually less by more than one-third than those paid in by it in 1919
47 before the revaluation and reassessment were made, the amount of the taxes paid by the plaintiff for all purposes to the State, counties, cities and towns in North Carolina being for the year 1919, $680,811.89, while for the year 1920 they were only $489,686.79.

9. The allegations of article nine are admitted, except as to the name of Commissioner of Revenue, which is Alston D. Watts instead of Augustus D. Watts.

10. The allegations of article ten are admitted.

11. The allegations of article eleven are admitted; but the defendants aver that the action of county boards of review referred to applied only to real property in general, including real property of railroads and of the plaintiff laying off the right of way, but not to their roadbed and other property used in their daily operation.

12. Defendants are informed and believe that the allegations of article twelve are true.

13. The defendants are informed and believe that the allegations of article thirteen are true.

14. The defendants are informed and believe that the allegations of article fourteen are true.

15. The defendants are informed and believe that the allegations of article fifteen are true.

16. Answering the allegations of article sixteen, the defendants deny that the Commissioner of Revenue made any assessment of the property of the plaintiff in North Carolina for 1921. It is admitted that by an addition to the assessment of strictly railroad properties of the plaintiff made by the State Tax Commission in 1920 of values assessed by local assessors on properties of the plaintiff lying off the right of way, the total assessment of the properties of the plaintiff, both the apportionable railroad properties and the properties off the right of way locally assessed, was fixed at $51,163,717 and that that figure is in excess of the total assessment for 1920, $50,867,800, by the amount of $296,917. It is admitted that the figure of $51,163,717 for 1921 is erroneous to the extent of
48 $295,917, and should be corrected by the deduction from it of that amount so erroneously included in the assessment of apportionable railroad properties.

This error arose from the fact that in 1920 in the returns made by the plaintiff to the State Tax Commission and upon which the State Tax Commission assessed the plaintiff's railroad property, the plaintiff itself, through confusion or misunderstanding, included certain items of property in Edgecombe and New Hanover counties which were properties lying off the right of way, not railroad property, and which therefore should have been assessed by local assessors. These properties increased the amount of the assessment of the plaintiff's railroad properties apportionable to the counties through which the plaintiff's railroad runs. In 1921 these local properties were also assessed by local assessors. The Revenue Commissioner brought forward for 1921 the assessment of plaintiff's railroad properties as the same was made by the State Tax Commission for 1920, which assessment as hereinbefore stated contained also these items of local property. The result was that these properties were assessed twice, locally and as a part of the assessment of railroad property, for the year 1921, and this amount of $295,917 should therefore be deducted from the total assessment of plaintiff's railroad properties apportionable to counties.

This error or confusion for 1921 was only called to the attention of the Commissioner of Revenue a short time before this suit was instituted, and it was agreed by the office of the Commissioner of Revenue that it should be corrected or adjusted in this litigation.

17. The allegations of article seventeen are denied, except that the Commissioner did give the plaintiff a hearing as alleged. The

defendants aver that the Commissioner of Revenue gave to the plaintiff the benefit of the same percentage of reduction allowed in the respective counties to other persons and corporations upon
49 all of the real property of the plaintiff lying off its right of way and not used by it in its daily operations for purposes of transportation, except as to certain errors or confusions caused by plaintiff's returns hereinafter referred to.

It is admitted that a hearing was had before the Commissioner of Revenue August 16, 1921; but it is denied that facts were adduced before him showing that the assessment of plaintiff's properties in North Carolina for taxation was unfair or discriminatory; that it would be taking the property of the plaintiff without due process of law, or that it would be denying to the plaintiff the equal protection of the law, or that it was not uniform, or that it was not made in accordance with Chapter 38 of the Public Laws of 1921, or that it should be reduced in order to equalize the value of the plaintiff's property with that of other persons and corporations assessed for taxes for the year 1921 under the laws of North Carolina; and it is further denied that such facts existed.

Further answering article seventeen, the defendants aver that the Revaluation Act, Public Laws of 1919, Chapter 84, was passed by the General Assembly of North Carolina for the purpose of making the tax laws of the State accord with Section 3 of Article V of the Constitution of North Carolina by making the ascertainment of the true value in money of all property in the State the basis of assessment for taxation. This law provided for a complete revaluation of all property, real, personal, and mixed, by local appraisers in the county, and of railroad properties by the State Tax Commission, this new valuation to be used as the basis for computing the ad valorem taxes for the years 1920 to 1923, inclusive, when the same should be approved and the tax rates for the State revised by the General Assembly, and when the tax rates levied by the counties, cities, towns, and special-tax districts should be revised under rules to be laid down by the General Assembly.

The general revaluation of all property in the State was
50 made pursuant to this act. Real estate in general in the State was raised about two hundred per cent in value above the assessments for 1919. Railroad properties in the State were raised by the State Tax Commission under the provisions of the said Revaluation Act only about one hundred per cent above the 1919 assessments. The said revaluation and assessments were thereupon approved and adopted by the General Assembly in the Extra Session of 1920 (August), by Public Laws of 1920, Chapter 1, called the Revenue Act of 1920. By this statute the General Assembly adopted the revaluation assessment as the basis for the levy of taxes for the years 1920 to 1923, inclusive. This act, furthermore, revised the tax rates of the State and authorized and made the rules for the revision of tax rates by counties, cities, towns, and special-tax districts, which revisions were actually made.

The defendants aver that the revaluation had been made at a time when farm products, farm land, and real estate in general were

bringing in the market abnormally high prices which at the time were thought to be stable. A sharp period of depression affecting particularly the values of such real estate and products followed almost immediately after the said reassessment under the Revaluation Act and much real property fell in market value below the value at which it had been assessed under the revaluation. It is denied, however, that the 1920 assessment of railroad properties in the State under the Revaluation Act was made at a time when such property was abnormally high, as other property was, and it is denied that any such depression in the market values of railroad system properties followed the said revaluation.

As a result of the condition above described as applied to farm lands and other real estate, there was enacted in the Machinery Act of 1921, Section 28 (*a*) thereof, as quoted in article ten of the complaint, which provided that county boards of commissioners
51 and county boards of appraisers and review, appointed under the Revaluation Act, should sit together jointly as county boards of review to determine if the valuation of real estate in the counties as a whole, as made under the Revaluation Act, was in excess of the fair value of such property at the time of meeting of the said boards of review. It provided that if it should be found that the assessments of real estate were thus excessive, the boards of review should find the average percentage of excess for their respective counties and report the same to the State Tax Commission. It provided that the valuation as assessed under the Revaluation Act and as reduced by this average percentage of reduction should be the value at which property should be assessed for taxation unless and until changed by the State Tax Commission.

The county boards of review in sixty-seven counties in the State, after due consideration, decided to make reductions and report the same to the State Board of Equalization, pursuant to these provisions. The assessments of value which had been made under the Revaluation Act were reduced by these percentages and the resulting assessments became the assessments for taxation in those counties. Plaintiff's properties lying off the right of way, and which, therefore, were assessed by local assessors as other real estate, and by them reported to the State Board of Equalization, were reduced proportionately along with all other real property in those counties in which such property of the plaintiff was situated and such reductions were allowed, except as to the confusions hereinbefore referred to.

Inasmuch as real property in general had been raised by the revaluation assessment to three times the former assessment, and the assessment of railroad properties by the State Tax Commission had been raised to only twice the former assessment; and inasmuch, therefore, as the assessments of real property in general for 1920 were in excess of their true market value, in 1921, and the assess-
52 ments of railroad properties for 1920 were not in excess of, but were at, their true value for 1921, the Commissioner of Revenue properly refused to make reductions of the said assessment of strictly railroad system property of the plaintiff to correspond with

the cuts made by the county boards of review on real property in general.

It is denied that the failure of the Commissioner of Revenue to apply the said reductions to the assessment of plaintiff's railroad property was in any way a discrimination against the plaintiff. It is denied that the causes which brought about a reduction in the market value of real estate in general in the counties in which a reduction was made applied to the plaintiff's railroad property, and it is denied that plaintiff's railroad system property, tangible or intangible, was reduced in value as was real estate in general.

The fall in value of real estate in 1920 and 1921 was due primarily to a radical decline in the price of farm products. Tobacco, cotton, and other large products of North Carolina dropped to phenominally low prices, and the values of farm lands and other real estate, and the rentals therefrom, declined sharply with the said decline of prices. Railroads, however, were not so affected. The same volume of crops was moved by the railroads, although the farmers received greatly reduced prices therefor, and, instead of the prices charged by railroads for their services being reduced, the railroads were actually allowed an increase of twenty-five per cent in freight rates and twenty per cent in passenger rates. It is, therefore, denied that the plaintiff should have been given or was entitled to the benefit of any reduction on the assessment of its railroad system property by reason of a decline in value of farm lands and other real property in general, which decline did not apply to railroad property.

It is denied that the values of the plaintiff's railroad properties depend upon the fluctuating values of other property in the State as affected by temporary advances and declines. It is denied
53 that the business of the plaintiff fluctuates directly or in any corresponding proportion with the values of farm lands, or other real property, or with the prosperity of the State it serves for any one year or temporary period of time. It is denied that the plaintiff's property has declined in value since 1920.

18. Answering the allegations of article eighteen, the defendants deny that there was any injustice, unfairness, or discrimination practiced by the Commissioner of Revenue or that any such injustice, unfairness, or discrimination existed in the assessing of the plaintiff's property. The total assessed valuation of real property in Edgecombe County for 1919 was $7,867,565. That assessment was raised under the Revaluation Act to $34,955,056 for 1920. The total assessed value of real estate for Nash County for 1919 was $7,865,680. That assessment was raised under the Revaluation Act to $36,300,096 for 1920. It results that under the Revaluation Act the real properties in these two counties instanced by the plaintiff were raised about four hundred per cent. The defendants aver that subsequent events and the sharp decline in 1921 proved that this increase under the Revaluation Act was excessive. The horizontal reduction of only fifty per cent was then applied to bring the 1920 assessment of the said properties back to its true actual value for 1921. Railroad properties, however, including the plaintiff's, had

never been subjected to any such increase under the Revaluation Act. The plaintiff's total properties in North Carolina having been increased only from $34,645,345 for 1919 to $50,867,800 for 1920, and there is, therefore, no comparison to be drawn between the real estate in general and the plaintiff's railroad properties. It is denied that the plaintiff was entitled to any reduction on its assessment for 1920, and that the refusal of the Commissioner of Revenue to make any such reduction was in any way discriminatory or wrongful.

It is denied that the plaintiff, as the result of said assess-
54 ment for 1921, will pay to Nash or Edgecombe County, or to any other county, any unlawful or excessive tax.

The defendants attach hereto, as Exhibit "A" to this answer, a table showing the comparative assessments for 1919 and for 1920 in all counties in the State.

19. The provisions of Section 62 of the Machinery Act are admitted to be correctly quoted in article nineteen of the complaint.

It is admitted that property off the plaintiff's right of way is shown in returns both of the plaintiff and of local list-takers under the heading "Property outside of the right of way listed with the local list-takers." The defendants deny knowledge or information sufficient to form a belief as to whether the correct assessment of such property for 1920 was $1,677,178, and aver that the figure which the State Tax Commission ascertained from a checking of the confused and conflicting returns of the plaintiff and of local assessors was $1,301,637. There was confusion in the returns to the State Tax Commission and to the Commissioner of Revenue. The Commissioner of Revenue intends, and has always intended, in arriving at the total value of the property, tangible and intangible, of the plaintiff in the State assessed for ad valorem taxes, to allow as reductions therefrom all reductions made by local assessors under the Act of 1921 on property of the plaintiff lying off the right of way and assessed by local assessors, and as to any such reductions which have been made by local assessors and which have not been deducted from the said total ad valorem assessment upon which the franchise tax is based, he stands ready to make such correction at any time upon proper showing, and offered to make such correction shortly prior to the institution of this suit, and since its institution his office has proposed to the plaintiff that such corrections be made in the course of this litigation.

20. Section 62 (*a*) of the Machinery Act of 1921 is admitted to be correctly quoted in article twenty of the complaint.

55 It is admitted that the Commissioner of Revenue refused to allow any reductions from the value of the plaintiff's railroad property assessed by the State Tax Commission in 1920 to correspond with reductions made by county boards of review on land in general in the counties, and the defendants aver that there was no reason for making such reductions, as hereinbefore alleged, since railroad properties had not fallen in value as had other real property, reference being here made to article seventeen of this answer and to Exhibit "A" attached hereto.

As hereinbefore stated, if the Commissioner of Revenue has failed to allow any reductions made by local assessors on property of the plaintiff lying off the right of way and to apply the same to the total value of plaintiff's property, railroad property and that off the right of way, as assessed for ad valorem taxation, upon which value the franchise or privilege tax is based, he stands ready upon proper showing to make such reduction, and his failure heretofore to do so, if he has so failed, has been due to confusion of the returns made by plaintiff and the local assessors and not to any purpose to refuse to allow such reductions.

It is denied that the illustration given by the plaintiff as to reductions made in Rocky Mount and in Nash and Edgecombe counties on real property in general and on real property of the plaintiff lying off the right of way and assessed by local assessors furnishes any grounds for the plaintiff's argument that the failure of the Revenue Commissioner to allow corresponding reductions on plaintiff's strictly railroad property assessed by the State Tax Commission was discrimination. It is denied that it was discrimination or a denial to the plaintiff of the equal protection of the law or in violation of the Fourteenth Amendment to the Constitution of the United States, or of Section 3 of Article V or of Section 9 of Article 7 of the Constitution of North Carolina. Further answering the allegations of article twenty of the complaint, the defendants refer to article seventeen of this answer and ask that the same be considered as a part of this article.

56

21. Answering the allegations of article twenty-one of the complaint, the defendants deny that the Commissioner of Revenue has certified to the various counties, cities, and towns any valuation of the plaintiff's property in excess of that certified by the State Tax Commission in 1920. It is admitted, as hereinbefore stated, that there is some confusion in the returns of plaintiff and the assessors, and that some corrections should be made, and the Commissioner of Revenue is ready to make such corrections upon proper showing.

22. The allegations of article twenty-two are denied.

23. It is denied that the Commissioner of Revenue has refused to make any attempt to equalize the value of the plaintiff's property with the property of other persons and corporations. The defendants aver that the value of the plaintiff's property is equalized in that it is assessed for taxation at its true value in money as required by law. As to the allegation that there is no appeal under the laws of North Carolina from the assessment and valuation fixed by the Commissioner of Revenue, the defendants aver that the question of such right of the plaintiff to appeal from an assessment of its properties made by the Commissioner of Revenue never has arisen and cannot arise until the next assessment is made in 1924, since the Commissioner of Revenue has not now and has never had the power or duty to make an assessment of railroad property, but only to review the assessment already made by the State Tax Commissioner in and for the year 1920. The same law which gave other taxpayers the right to a review of the 1920 or revaluation assessment, gave railroads, in-

cluding the plaintiff, the right of review before the Commissioner of Revenue, which right of review was granted to the plaintiff.

The defendants further aver that the plaintiff is not without a right of appeal from action of the Commissioner of Revenue; that under the law and procedure of North Carolina the writ of certiorari would lie at the suit of the plaintiff to the said Commissioner of Revenue from the Superior Court of North Carolina, and that by this writ the plaintiff may at any time take up for review any proceedings by the Commissioner of Revenue whereby its legal and constitutional rights may be deemed to be violated. It is denied that anything in the laws of North Carolina constitutes a denial to the plaintiff of the equal protection of the law or a violation of the uniformity clause of the North Carolina Constitution.

57

24. The allegations of article twenty-four are denied.

25. The defendants deny knowledge or information sufficient to form a belief as to what the tax rate for 1921 will be in the said counties. If it be true, as alleged, that the assessment of the plaintiff's property remains practically the same, whereas the assessment of other property is reduced, that is because the value of the plaintiff's property has remained practically the same, whereas the value of other property either had been over-estimated for 1920 or has decreased since then. It is denied that the same causes which brought about a decrease in value of real estate in the counties in which the reduction was made applied to the plaintiff's railroad property, and it is denied that the decrease in value applies to the plaintiff's railroad properties as it does to real property in general. As hereinbefore alleged in article seventeen, the causes which decreased the values of land as land, did not apply to values of railroad property, and it is denied, therefore, that the reductions referred to were or were intended to be a general scheme of reductions due to general conditions applicable alike to railroad properties and to landed properties, and it is denied that the same should be applied to railroad properties and to the plaintiff's property in particular, as they were applied to real property in general. It is denied that the failure of the plaintiff to receive the benefit of such reductions to any greater extent than the same were actually applied to properties of the plaintiff lying off its right of way, is contrary to any part of the Constitution of North Carolina, or to the Constitution of the United States, or that it denies to the plainiff the equal protection of the law or takes its property without due process of law.

58

26. Section 65 of the Machinery Act of 1920 is admitted to be correctly quoted in article twenty-six, and the defendants aver that the said Section 65 and the proviso thereof, constitute the statute particularly controlling the assessment for taxation of the property of railroads doing interstate commerce and operating both within and without the State of North Carolina, such as the plaintiff's railroad.

27. It is denied that the method employed by the State Tax Commission, in arriving at the valuation of the plaintiff's property in North Carolina for the year 1920, was illegal or resulted in the over assessment of the plaintiff's property for taxation under the laws of North Carolina. It is denied that the Commissioner of Revenue unjustly or illegally refused to reduce the said assessment for the year 1921. It is denied that the State Tax Commission used the method of capitalization of the plaintiff's net income for North Carolina, exclusively, in arriving at the said assessment. As required by Section 64 of the Machinery Act, the State Tax Commission in 1920, in determining the value of the tangible and intangible property of the plaintiff for taxation gave due consideration to all those factors, modes and methods therein required to be considered. And as further required by Section 65 of the said Machinery Act, the State Tax Commission also gave due consideration to the character of the roadbed and fixed equipment of the plaintiff in North Carolina; to the number of miles of double track in the said State; to the amount of gross and net earnings per mile of road in the said State; and, to all other factors which would give a greater or less value per mile of road in this State than the average value for the plaintiff's entire system.

59 The State Tax Commission applied the foregoing methods and considered the foregoing factors in arriving at the assessment of the plaintiff's property, as it was required to do by law. It is denied that the method of capitalization of the plaintiff's net income in North Carolina was the exclusive method use by the State Tax Commission. That method was used merely as one consideration in connection with the other considerations as hereinbefore stated. In the application of that method, in so far as it was applied, it is admitted that the average net income of the plaintiff in North Carolina for the years 1915 to 1919, inclusive, was taken as a basis, and was obtained by deducting from the revenue allocated to North Carolina the average annual taxes paid in that State, and the average annual operating expenses allocated to that State. The defendants aver that the determination of the net income for the State of North Carolina is justly and fairly arrived at by that method. It is admitted that the allocation of operating expenses by the plaintiff to branches or divisions of the plaintiff's railroad and to states is not made with mathematical accuracy. The defendants aver that the allocation of operating revenues to any branch or division of the plaintiff's railroad or to any state is made with mathematical accuracy, and that the allocation of expenses, although it may not be mathematically accurate, is made by the plaintiff itself regularly according to a method devised by the plaintiff; that this method, as defendants are informed, is the most accurate which the plaintiff has been able to devise; that it is impossible to find a method of such allocation which will be absolutely accurate; and that the system used by the plaintiff approximates accuracy.

It is denied that the State laws and regulations of North Carolina requiring reports prescribe the methods of accounting or of alloca-

tion of revenues and expenses which the plaintiff shall adopt; the said laws and regulations merely require of the plaintiff reports of gross revenue, gross operating expenses, and net revenue.
60 The plaintiff devises its own methods of allocating these items to obtain the figures required to be reported by the laws of North Carolina. It is denied that under the existing accounting methods of the plaintiff for allocating expenses to North Carolina, operating expenses so allocated are understated and net income overstated. It is admitted that only expenses accruing within that State are charged to State expenses, while some traffic passing through that State is assembled or originates at, and is destined to, terminal points without North Carolina at which large operating expenses accrue, no part of which expenses is apportioned to North Carolina, while the mileage revenue therefrom is apportioned to North Carolina. On the other hand, the defendants aver that an enormous amount of interstate traffic of the plaintiff originates in North Carolina destined to points without the State; that large operating expenses accrue at the points of origin in North Carolina and are wholly apportioned to that State, whereas only a small proportion of the mileage revenue of such shipments is apportioned to North Carolina, and portions of such mileage revenue are apportioned to other states across which such shipments are made without the corresponding allocation to such states of any part of the terminal expenses accruing at the points of shipment in North Carolina. The defendants further aver that the same is true as to large amounts of interstate traffic coming from without North Carolina and terminating within North Carolina. For illustration, Wilson and Rocky Mount are among the largest tobacco markets in the State. Great quantities of tobacco are shipped over plaintiff's line from those and other points destined to points in other states. In the assembling, preparation, and initiating of these shipments there are large terminal expenses at the points of shipment, the whole of which are charged in North Carolina expenses, while North Carolina revenue is credited with only a very small mileage proportion of the entire revenue from such shipments. The same thing is true of
61 large shipments from many points throughout the cotton belt in eastern North Carolina, of shipments of tobacco from various smaller markets, of shipments of fruits and vegetables and of shipments of naval stores and other products of this State over Plaintiff's lines in this State.

Large interstate shipments also come from other states into North Carolina destined to points in this State over plaintiff's lines, as for example, to Wilmington, where they are received both for distribution and exportation from this important port. On such shipments there are large terminal expenses at the point of destination in this State, the whole of which are charged in North Carolina expenses, while North Carolina revenue is credited with a very small proportion of the entire revenue from such shipments.

While terminal points in North Carolina are not concentrated in a few large cities like Savannah or Richmond, they are widely

spread throughout all that part of the State served by the plaintiff, and there are great numbers of smaller cities and towns through which the plaintiff's railroad runs which are important shipping, receiving, and terminal points for the large imports into, and exports from this large and highly productive State.

In addition, there are located within North Carolina at Rocky Mount among the largest terminal yards and repair shops of the plaintiff, and other large yards are located at Wilmington, N. C. The defendants are informed and believe, and so allege, that as much as seventy-five per cent of the operating expenses at these points are logically applicable to interstate traffic, but that all of the said operating expenses are charged against North Carolina revenue.

28. It is denied that this method of allocating earnings to the State of North Carolina is illegal or works to the disadvantage of the plaintiff for the purpose of ascertaining the net income of the plaintiff in North Carolina as alleged in article twenty-eight of the complaint.

62 (*a*) On information and belief the defendants deny that traffic which moves through North Carolina greatly exceeds the traffic originating in, or destined to, North Carolina, and that North Carolina escapes terminal expenses on any more than a proper proportion of the plaintiff's total traffic; and the defendants aver that traffic originating in North Carolina runs through many other states which receive the benefit of revenues from shipments for which North Carolina is charged the entire assembling and initial expenses, and that traffic destined to North Carolina likewise runs through many other states which receive the benefit of their mileage proportion of the revenues from shipments, the entire final terminal expenses for which are charged in North Carolina expenses. The defendants further aver that this system of allocation of revenues and expenses which the plaintiff itself has devised and uses, and which the State Tax Commission received from plaintiff and adopted, is a method which evens itself up and gives to the respective states through which the plaintiff's system runs the most accurate possible allocation, otherwise the plaintiff itself would have abandoned this system and devised another.

(*b*) It is admitted that as to individual terminal points in North Carolina, the expenses at such points are less than those at certain larger terminal points in other states as named by the plaintiff in article twenty-eight (*b*). However, as hereinbefore alleged, this simply results from the fact that in other states through which the plaintiff's system runs terminal expenses are concentrated in larger terminal points, while throughout the portion of North Carolina served by the plaintiff terminal expenses are widely disseminated among a multitude of smaller terminal points. The defendants, therefore, aver that the allocation of operating expenses to North Carolina made by the plaintiff and filed with the Tax Commission represents in the aggregate an approximately correct charge of ex-

penses against North Carolina revenue, and that the ratio of
63 operating expenses to operating revenues in North Carolina is truly less than that of the entire system.

(c) It is denied that under the scheme of taxation adopted by North Carolina, property of the plaintiff outside that State and not used in the plaintiff's business in that State, is taxed by the State. The defendants aver that if any properties of the plaintiff outside of the State of North Carolina are taken into consideration in arriving at the assessment of plaintiff's property in the State, it is only done in so far as the said properties outside of the State are a part of the values of the plaintiff's entire organic system and may be properly considered in estimating the true value of the properties of the plaintiff in this State.

It is admitted that the operating revenue and operating expenses for the plaintiff's entire system are kept accurately, in so far as possible, and that its accounting is done under rules prescribed by the Interstate Commerce Commission and is checked by that body, and also by certified public accountants. It is denied that the capitalization of the plaintiff's net income for its entire system, the determination therefrom of the value of the plaintiff's entire property, and the apportionment of this result to North Carolina to give the value of properties in North Carolina is the proper method to be used as a consideration in arriving at the value of the plaintiff's properties in North Carolina.

29. It is denied that in arriving at the valuation of the plaintiff's property for the year 1920 the State Tax Commission did not assess and value the same according to the law of North Carolina. It is denied that either the net-earnings plan or the stock-and-bonds plan alone could have been properly used by the Commission in arriving at the valuation which it placed upon the plaintiff's property without the use at the same time of the other considerations required by the statutes of North Carolina as hereinbefore alleged. The defendants aver that the correctness of the said valuation cannot be
64 checked or tested by an exclusive application of either of the plans referred to in article twenty-nine of the complaint. It is denied that the said valuation, tangible or intangible, was made upon an arbitrary basis or without justification. It is admitted that the said Commission assessed the tangible property of the plaintiff for the year 1920 at a valuation of $39,620,930, or 149.33 per cent more than the same was assessed for 1919; the defendants aver, however, that the assessment of real properties in general in North Carolina for the year 1920 was more than 200 per cent higher than that for the year 1919, a very much larger increase than that applied to the plaintiff's property. It is denied that the State Tax Commission arrived at the assessment of the plaintiff's tangible property by a sole consideration of the Investment in Road and Equipment of the entire system, and it is denied that the said assessment gave to North Carolina any property valuation to which it was not entitled, and which is not properly taxable by it. It is admitted that the tangible property was assessed at $11,246,870, but it is

denied that that assessment was not made in accordance with Sections 64 and 65 of the Machinery Act of 1921. It is admitted that the aggregate valuation for 1920, tangible and intangible, was $50,867,800, and the defendants aver that the said valuation and assessment was correctly arrived at by a due consideration of all the factors, mode and methods required by the statutes of North Carolina, and that the same was legal and correct.

The defendants do not deny that the tables of figures on page 43 of the complaint are correct so far as calculations are concerned. They deny, however, that the proper figure to capitalize was the alleged average net operating revenue of the plaintiff's entire system per year for five years of $8,932,592.89, and that the figures in the second table, showing the allocation of the result of such capitalization to North Carolina at various percentages are
65 in any way the measure of the value of the total properties of the plaintiff in North Carolina, or should properly be considered in arriving at the value of the said properties. The defendants do not deny that the tables of figures on page 44 of the complaint are correct in their calculations. They deny, however, that the figures on that page, showing the capitalization at various percentages of the alleged average net operating revenue of the plaintiff for North Carolian, are, or any one of the said figures is, the measure of the value of the total properties of the plaintiff in North Carolina and subject to taxation by that State; and they deny that the assessment of plaintiff's properties for taxation can be tested or proved by a comparison with any of the said figures.

It is denied that the assessment of the plaintiff's property amounts to a tax on property beyond the jurisdiction of North Carolina, that the same is a burden upon interstate commerce, or is in violation of the commerce clause of the Constitution of the United States.

30. It is admitted that six per cent was the percentage used by the State Tax Commission in capitalizing the plaintiff's net income to the extent that that method was used at all in arriving at the said assessment. The defendants aver that that is a proper figure for such purpose. They aver that six per cent is the legal rate of interest for North Carolina. They deny that the percentage which should have been used is eight per cent or any other figure than six per cent. It is further alleged that the use of a six per cent capitalization of the plaintiff's net income for North Carolina was only one of the many factors to which the State Tax Commission gave due consideration as required by statute in arriving at the assessment for 1920, and that the consideration of this six per cent capitalization method had the effect of making the assessment less than the consideration of other factors would have made it, and resulted, therefore, in a benefit to the plaintiff. The defendants further aver
66 that interest rates on money show temporary fluctuations, and that the values of permanent properties of railroads do not fluctuate in any corresponding manner.

31. It is admitted that the figures quoted in article thirty-one were submitted to the Commissioner of Revenue as bearing on the

question as to whether he should reduce the plaintiff's assessment for taxation. It is denied that he refused to give any consideration to the said figures, and the defendants aver that he did give them due consideration. The defendants aver, however, that the said decrease of net operating revenue from 1916 to 1920 was purely temporary, that for the year 1921 the ratio of operating expenses and taxes to operating revenue is decreasing rapidly in the plaintiff's favor, and that its net earnings are increasing and promise to continue to increase. It is denied that the temporary depression suffered by the plaintiff is in any way an index of what its net earnings will be or was reflected in any corresponding depression in the actual values of the plaintiff's railroad properties. It is denied that the plaintiff's property values fluctuated in correspondence with fluctuation in values which may have occurred with respect to other persons and corporations.

32. It is admitted that the statute of North Carolina required the Commissioner of Revenue to consider the value placed upon the property of the plaintiff by the public, as evidenced by the value of capital stock, bonds, certificates of indebtedness and other obligations, the value of which is based upon the earning capacity of the property, as alleged in article thirty-two; it is denied, however, that the said statute makes that consideration controlling or allows it to be used as the sole determining factor, in arriving at the valuation of the property of the plaintiff in North Carolina.

The defendants deny knowledge or information sufficient to form a belief as to the figures quoted by the plaintiff on pages 45 to 50, inclusive, of the complaint as to its capitalization, par value,
67 and average market value. It is denied, however, that either the alleged figure representing the par value capitalization allocated to North Carolina on mileage basis of $41,150,361.90, or the alleged figure representing the market value capitalization allocated to North Carolina upon a mileage basis of $34,908,626 for 1920, or of $33,696,925 for 1921, is the measure of the value of plaintiff's property in North Carolina, or was or should have been a controlling factor in arriving at the valuation of the same. It is denied that the assessment of the plaintiff's property can be proved or tested by a comparison of either one of these figures.

33. The defendants deny that the so-called franchise tax is not a franchise tax measured by the value of the use of the property but is in truth and in fact an ad valorem tax as alleged in article thirty-three of the complaint. The defendants aver that the said tax is an excise, franchise, or privilege tax imposed upon the privilege of doing a strictly intrastate business within the State of North Carolina. It is denied that the said tax is not levied equally; the defendants aver that the said excise, franchise, or privilege tax, levied upon the plaintiff in addition to the ad valorem property tax, does not and cannot constitute double or unequal taxation and is violative neither of Section 3 of Article V of the Constitution of North Carolina, nor of the Fourteenth Amendment to the Constitution of the United States. It is denied that the ad valorem assessment of

the plaintiff's property is excessive, iniquitous or damaging, and that the franchise or privilege tax of 1/10 of one per cent of the said assessment is in any way excessive, iniquitous, damaging, or illegal It is denied that the said tax is levied under the guise of a franchise tax, but the defendants aver that it is a true franchise or privilege tax, not a property tax, and that it is entirely within the power of the State of North Carolina to levy the said franchise or privilege tax in addition to ad valorem property taxation, and that by
68 reason of the fact that the said franchise or privilege tax is admeasured, not by any earnings from interstate commerce nor by any properties outside of North Carolina, but only by the total properties of the plaintiff within the State of North Carolina, the said tax is in no way a burden upon interstate commerce; that it is not a tax on the privilege of engaging in interstate commerce, nor is its payment made a condition precedent thereto, and that it violates no part of the Constitution of the United Sates.

34. It is denied that the said franchise tax is not uniform and is not levied equally upon corporations, as alleged in article thirty-four of the complaint. It is alleged that the placing of railroad companies in one class and of other corporations in another class, and the imposition of a franchise or privilege tax based on total properties in the State on corporations of the first class, and the imposition of such a tax based on capital stock upon corporations of the second class is a reasonable, legitimate, and perfectly justifiable classification, and in no way violates the rule of uniformity prescribed by Section 3 of Article V of the Constitution of North Carolina, or denies to the plaintiff the equal protection of the law, or deprives it of its property without due process of law, or constitutes a burden upon interstate commerce, or in any way violates the Constitution of the United States or the commerce clause thereof, or the Fourteenth Amendment thereto.

35. Answering allegations of article thirty-five of the complaint, the defendants admit that the plaintiff was required to pay for the year 1920, and did pay, under protest, $50,867.80, the same being the result of a calculation based upon 1/10 of one per cent of the value of the property of the plaintiff, tangible and intangible, in this State, as assessed for ad valorem taxation, used as the measure of the extent to which the plaintiff is exercising its franchise (the privilege of engaging in intrastate commerce) in this State.
69 They admit also that the plaintiff will be required to do the same for the year 1921. They deny that under the provision of Section 82 (3½) of the Revenue Act, the plaintiff should only be required to pay upon one-half of such value. They aver that Section 82 (3½) has no application to railroads or to the franchise or privilege taxes on railroads; that it is a section which was enacted in 1920 and was specifically limited in its application to taxes on corporations as levied in Section 82 of the Revenue Act of 1919; that railroads and the franchise taxes thereon were not included in any part of the said Section 82 of the Revenue Act of 1919; that when Section 82 (6½) was inserted in that section in 1920, as herein-

before alleged, thereby shifting the provision for a franchise or privilege tax on railroads to its present position as subsection (6½) of the said Section 82, it was not intended to make the said Section 82 (3½) applicable to the tax imposed by section 82 (6½); and that the said Section 82 (3½) does not now apply, and never has applied, to railroads or taxes on railroads.

It is denied that the failure of Section 82 (3½) to apply, or to be applied, to the franchise or privilege tax levied upon the plaintiff deprived or deprives the plaintiff of the equal protection of the laws or violates the Fourteenth Amendment to the Constitution of the United States or the uniformity clause of the Constitution of North Carolina.

The defendants pray that the prayers made by the plaintiff in article thirty-five, and each of them, be denied by this Court; they aver that this Court has no power to grant such prayers, or either of them, that the franchise tax paid by the plaintiff to the State of North Carolina for 1920 was a legal tax, correctly ascertained, and lawfully due to the said State, and that the said Section 82 (3½) has no application to such tax, and has no effect to reduce the correct amount thereof to one-half of the amount so paid by the plaintiff.

36. The allegations of article thirty-six are denied.

70 37. Answering the allegations of article thirty-seven, the defendants deny that the imposition upon the plaintiff of an ad valorem property tax, of a franchise or privilege tax of 1/10 of one per cent based upon the ad valorem valuation of the plaintiff's properties within the State, and of an additional income tax of three per cent on net operating revenue, referred to by the plaintiff as a system of pyramiding taxes, amounts to or constitutes a regulation of commerce between the states, a tax upon interstate commerce, or a burden on interstate commerce of the plaintiff, or violates Section 8 of Article I of the Constitution of the United States. The defendants allege that it is perfectly competent for the State of North Carolina, after taxing the property (tangible and intangible) of the plaintiff ad valorem as property, to levy upon the plaintiff an additional tax for the privilege of engaging in intrastate commerce (exercising its franchise in the State), and then to levy an additional tax of three per cent on its net income, which said income tax is levied equally upon all other corporations without discrimination.

38. It is admitted that the plaintiff will owe to the State, counties and municipalities the legally enacted tax upon whatever may be found to be the legal assessment for taxes upon its properties in the State of North Carolina, and the defendants aver that the said legal assessment for 1920 was that fixed for that year, and that for 1921 was that fixed for that year, excepting corrections hereinbefore referred to.

39. Answering the allegations of article thirty-nine, the defendants deny that the said assessment is illegal, and that this suit is brought to avoid a multiplicity of suits. It is denied that the said assessment is invalid; it is denied that unless the tax collecting officers of the several counties and municipalities, and the State of-

ficials, defendants herein, are restrained they will proceed to collect any illegal taxes against the plaintiff. On the contrary, the defendants aver that the said taxes which the said officers will pro-
71 ceed to collect are valid and lawful; that they of right will become a first lien upon the real property of the plaintiff in North Carolina if not paid; it is denied that the said rightful lien will constitute a cloud upon the title to the said property against which equity should grant relief; it is denied that the plaintiff will be damaged by the remedies for the collection of the said lawful and valid taxes; and it is denied that the plaintiff has no adequate remedy at law.

Prayer.

Wherefore, the defendants, having fully answered the complaint filed in this suit, pray the Court that every and singular the prayers of the said complaint be denied and that the same be dismissed at the costs of the plaintiff.

JAMES S. MANNING,
Attorney-General of North Carolina;
FRANK NASH,
Assistant Attorney-General of North Carolina,
Solicitors for the Defendants.

WILLIAM P. BYNUM,
GEORGE H. BROWN,
LOCKE CRAIG,
THOMAS D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel.

72 A. D. Watts, being duly sworn, says that he is one of the defendants in the above entitled suit; that he has read the foregoing answer to the complaint, and that it is true of his own knowledge except as to matters therein stated on information and belief, and as to them he believes it to be true.

A. D. WATTS.

Sworn to and subscribed before me, this 11th day of November, 1921.

W. P. STACY,
Associate Justice N. C. Supreme Court.

Comparative Statement of Taxable Values for the Years 1919 *and* 1920, *Showing Number of Acres of Land, Value of Timber, Manufacturing, Mineral, and Quarry Properties, Average Value per Acre, Value of Town Lots, Value of Real Estate, Value of Personal Property, and the Aggregate Value of Real and Personal Property Listed with County Supervisors.*

(NOTE.—This statement does not include railroad and public service corporations, banks, and corporate excess assessed by the State Tax Commission.)

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Alamance, 1919	257,742	$2,786,845	$10.81	$2,058,055	$6,844,638	$5,532,968	$11,377,606
Alamance, 1920	262,836	9,966,036	37.92	7,159,464	24,964,832	10,537,710	35,472,542
Alexander, 1919	157,970	1,283,419	8.12	194,050	1,667,975	1,615,101	3,283,076
Alexander, 1920	165,761	4,864,885	29.30	681,423	6,527,000	1,956,886	8,483,886
Alleghany, 1919	143,309	957,833	6.68	28,343	996,054	940,622	1,936,676
Alleghany, 1920	147,001	5,383,189	36.62	83,210	5,383,189	1,465,520	6,848,709
Anson, 1919	328,634	2,663,408	8.11	964,020	4,379,115	3,781,961	8,161,076
Anson, 1920	329,715	10,529,114	31.93	2,855,697	13,384,811	6,831,284	20,216,095
Ashe, 1919	268,508	2,094,573	7.80	73,833	2,172,551	2,555,766	4,728,317
Ashe, 1920	272,678	12,360,480	45.33	322,432	12,731,463	3,917,513	16,648,976
Avery, 1919	113,053	1,059,508	9.37	128,961	1,571,789	672,046	2,243,835
Avery, 1920	130,932	3,863,827	29.51	308,197	4,793,754	1,133,928	5,927,682
Beaufort, 1919	379,913	3,422,611	9.00	2,534,192	6,365,173	4,231,976	10,597,149
Beaufort, 1920	396,759	24,325,213	61.31	4,238,253	29,207,006	8,462,799	37,669,805
Bertie, 1919	450,883	3,040,339	6.74	862,130	4,055,859	3,467,887	7,523,746
Bertie, 1920	400,557	9,629,044	24.00	2,259,976	13,958,782	5,301,677	19,260,459
Bladen, 1919	502,723	2,655,945	5.28	287,732	3,545,259	2,250,967	5,796,226
Bladen, 1920	524,585	10,092,335	19.24	794,790	11,630,040	3,418,325	15,048,365
74 Brunswick, 1919	476,230	2,406,552	5.05	490,048	2,896,600	1,640,498	4,537,098
Brunswick, 1920	502,593	5,477,845	10.90	970,035	7,953,027	2,017,305	9,970,332
Buncombe, 1919	312,642	6,664,587	21.32	13,484,771	21,862,308	9,232,489	31,094,797

Buncombe, 1920	.....	.....	....	.....	60,319,591	17,442,518	77,762,109
Burke, 1919	297,084	2,445,419	8.23	883,211	3,651,492	2,318,258	5,969,750
Burke, 1920	316,304	7,164,477	22.65	1,932,615	11,047,772	4,793,304	15,841,076
Cabarrus, 1919	208,079	2,213,175	10.64	1,734,076	6,729,195	5,406,793	12,135,988
Cabarrus, 1920	222,036	9,964,995	44.88	6,185,440	30,211,743	15,069,837	45,281,580
Caldwell, 1919	227,055	1,809,693	7.97	669,221	3,502,721	2,142,059	5,644,780
Caldwell, 1920	258,296	7,792,632	30.17	2,896,422	13,257,242	4,458,020	17,715,262
Camden, 1919	145,857	1,083,289	7.42	58,607	1,288,061	672,329	1,960,390
Camden, 1920	149,262	3,587,989	24.04	121,547	3,736,356	846,591	4,582,947
Carteret, 1919	239,554	1,703,631	7.11	1,056,084	2,993,060	1,586,379	4,579,439
Carteret, 1920	233,162	7,972,149	34.19	1,650,790	10,405,339	2,940,095	13,345,434
Caswell, 1919	262,748	1,686,517	6.42	116,680	1,803,197	2,188,466	3,991,663
Caswell, 1920	268,746	8,743,808	32.54	309,340	9,053,148	2,920,697	11,973,845
Catawba, 1919	256,932	2,460,000	9.58	1,604,830	4,692,916	5,370,515	10,063,431
Catawba, 1920	254,423	12,339,008	48.50	7,735,670	26,677,188	9,357,453	36,034,641
Chatham, 1919	404,913	3,063,242	7.04	504,565	4,082,437	3,551,644	7,644,081
Chatham, 1920	435,773	10,063,328	23.09	1,243,459	11,813,037	4,594,017	16,407,054
Cherokee, 1919	273,738	2,115,327	7.42	717,719	2,833,046	1,690,555	4,523,601
Cherokee, 1920	303,762	3,045,638	10.03	871,876	4,264,124	2,331,748	6,595,872
Chowan, 1919	99,067	1,159,788	11.60	582,677	2,007,621	1,778,608	3,786,229
Chowan, 1920	110,499	4,410,953	39.92	2,412,177	6,823,130	3,594,041	10,417,171
Clay, 1919	126,778	743,216	5.86	22,361	808,427	425,462	1,233,889
Clay, 1920	170,813	2,106,635	12.33	47,580	2,154,215	693,421	2,847,636
Cleveland, 1919	278,395	3,827,884	13.75	1,520,971	7,574,843	4,909,563	12,484,406
Cleveland, 1920	277,843	16,422,057	59.11	4,554,698	28,158,726	11,168,356	39,327,082
Columbus, 1919	458,631	3,429,666	7.48	822,207	4,922,220	4,061,355	8,983,575
Columbus, 1920	.....	.....	....	.....	15,789,229	6,600,000	22,389,229
Craven, 1919	364,212	2,421,364	6.65	4,354,543	7,617,226	4,097,447	11,714,673
75 Craven, 1920	323,112	15,488,629	47.94	13,256,829	28,745,458	9,352,424	38,097,882
Cumberland, 1919	338,497	3,116,070	9.21	2,513,375	6,348,011	4,990,251	11,338,262
Cumberland, 1920	358,317	12,835,535	35.82	7,393,804	20,522,039	7,677,734	28,089,773
Currituck, 1919	148,426	1,513,584	10.20	.....	1,733,291	705,677	2,438,968
Currituck, 1920	125,080	4,541,124	36.30	.....	4,541,124	1,033,871	5,574,995
Dare, 1919	208,400	494,859	2.37	100,929	626,963	301,642	928,605
Dare, 1920	.....	.....	....	.....	2,282,743	593,808	2,876,551
Davidson, 1919	35,442	.....	....	.....	6,957,305	3,806,554	10,763,859

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Davidson, 1920	355,066	15,295,793	....	6,611,775	30,638,102	9,691,903	40,330,005
Davie, 1919	160,640	1,529,050	9.52	358,529	2,294,469	3,043,548	5,338,017
Davie, 1920	162,798	7,224,899	44.00	2,753,491	9,978,390	3,939,443	13,917,833
Duplin, 1919	449,760	3,689,316	8.20	850,138	4,723,287	4,976,607	9,699,894
Duplin, 1920	457,279	23,071,185	50.45	1,100,364	24,211,549	7,285,518	31,497,067
Durham, 1919	178,534	3,569,232	19.99	8,021,399	14,777,121	20,808,813	35,585,934
Durham, 1920	182,608	9,530,019	52.19	19,560,602	43,426,847	66,651,182	110,078,029
Edgecombe, 1919	306,562	4,131,420	13.60	3,036,247	7,867,565	7,415,180	15,282,745
Edgecombe, 1920	309,497	24,897,646	80.44	10,054,910	34,955,056	10,256,906	45,211,962
Forsyth, 1919	230,680	2,871,776	12.45	9,546,925	14,234,803	22,223,137	36,457,990
Forsyth, 1920	237,190	13,961,294	58.86	21,757,422	72,197,173	64,402,548	136,599,721
Franklin, 1919	303,215	3,082,712	10.16	1,482,479	4,607,194	4,565,486	9,172,680
Franklin, 1920	301,008	14,667,266	48.73	1,927,314	16,594,580	6,167,700	22,762,367
Gaston, 1919	201,263	2,648,515	13.16	2,807,246	11,302,506	8,192,666	19,495,172
Gaston, 1920	211,528	14,233,409	67.29	11,767,733	52,344,289	22,745,959	75,090,248
Gates, 1919	196,651	1,830,440	9.31	136,799	1,986,648	1,433,647	3,420,295
Gates, 1920	158,145	5,250,857	33.20	326,225	5,631,242	1,663,562	7,294,894
Graham, 1919	177,414	984,505	5.55	28,350	2,132,988	599,954	2,732,942
Graham, 1920	195,803	2,106,480	10.76	46,350	4,869,736	1,337,240	6,206,976
Granville, 1919	319,516	2,839,542	8.88	1,267,086	4,324,621	4,571,084	8,895,705
Granville, 1920	334,774	9,515,391	38.20	3,463,640	16,088,145	6,775,885	22,864,030
Greene, 1919	159,369	1,946,611	12.21	295,283	2,250,882	3,391,246	5,642,128
Greene, 1920	159,276	13,358,939	83.87	984,687	14,343,626	5,666,466	20,010,092
Guilford, 1919	393,239	6,646,810	16.90	9,183,654	18,884,912	12,058,586	30,943,498
Guilford, 1920	394,318	20,889,651	52.98	22,906,580	85,158,132	30,894,441	116,052,573
Halifax, 1919	409,577	4,404,845	10.75	2,349,656	8,675,643	10,385,714	19,061,357
Halifax, 1920	425,386	16,359,967	38.22	6,436,375	35,636,872	12,536,587	48,173,459
Harnett, 1919	353,154	3,077,468	8.65	740,537	4,742,889	5,425,881	10,168,771

Harnett, 1920	346,418	14,418,178	41.62	3,514,044	20,823,234	8,165,342	28,988,576
Haywood, 1919	321,154	3,037,607	9.45	1,779,507	6,120,975	2,762,717	8,883,692
Haywood, 1920	343,881	10,960,771	31.87	4,024,593	17,326,364	6,080,935	23,407,299
Henderson, 1919	199,895	2,150,723	10.86	1,862,495	4,173,152	1,881,099	6,054,251
Henderson, 1920	195,716	4,689,786	23.00	3,796,873	11,322,157	3,101,037	14,422,194
Hertford, 1919	204,576	2,118,831	10.36	629,451	2,840,986	3,090,703	5,931,869
Hertford, 1920	201,537	8,738,122	43.36	1,991,046	10,747,168	3,609,665	14,356,833
76 Hoke, 1919	224,703	2,129,767	9.48	300,364	2,653,091	2,020,935	4,674,026
Hoke, 1920	221,230	9,967,460	45.05	944,313	11,244,263	2,995,910	14,240,173
Hyde, 1919	275,961	1,540,190	5.58	40,230	1,619,250	1,071,108	2,690,358
Hyde, 1920	420,604	11,837,110	28.14	443,911	12,281,021	2,035,801	14,316,822
Iredell, 1919	363,920	3,754,812	10.32	2,726,620	7,376,308	6,785,263	14,161,571
Iredell, 1920	364,507	15,358,713	42.63	6,728,014	26,500,459	10,117,767	36,618,226
Jackson, 1919	291,748	1,555,849	5.33	188,013	2,168,624	1,993,645	4,162,269
Jackson, 1920	319,180	6,068,768	19.01	222,843	6,608,611	3,149,193	9,757,804
Johnston, 1919	481,735	5,092,429	10.57	1,973,354	7,912,383	10,322,128	18,234,511
Johnston, 1920	498,946	32,620,897	65.38	7,092,072	42,030,138	15,477,315	57,507,463
Jones, 1919	291,477	1,666,958	5.72	260,788	1,969,921	1,378,496	3,348,417
Jones, 1920	294,634	7,585,777	25.75	712,063	8,447,840	2,255,143	10,702,983
Lee, 1919	155,733	1,467,390	9.42	926,313	2,735,378	2,144,202	4,679,580
Lee, 1920	163,139	6,712,698	41.15	1,019,819	8,706,469	3,371,944	12,078,413
Lenoir, 1919	222,375	2,205,289	9.92	2,329,826	4,859,933	5,518,123	10,378,056
Lenoir, 1920	239,868	20,753,505	86.52	11,629,585	33,857,010	10,910,400	44,767,410
Lincoln, 1919	179,225	2,119,195	11.82	586,071	3,446,982	4,256,437	7,703,419
Lincoln, 1920	193,391	7,504,532	38.80	2,009,709	12,584,088	5,417,219	18,001,307
Macon, 1919	260,925	1,490,137	5.71	406,713	2,006,353	1,293,125	3,299,478
Macon, 1920	275,716	5,011,838	18.18	189,631	5,201,469	1,330,869	6,532,338
Madison, 1919	262,922	2,108,634	8.02	392,267	3,241,392	2,617,167	5,858,559
Madison, 1920	278,933	7,576,333	27.16	791,445	8,367,778	2,775,922	11,143,700
Martin, 1919	267,953	2,956,812	11.13	941,390	4,116,229	4,768,842	8,885,071
Martin, 1920	287,276	12,848,746	44.72	2,699,065	15,613,311	6,799,760	22,413,071
McDowell, 1919	254,751	.....	....	.....	2,675,983	1,042,136	3,718,119
McDowell, 1920	241,210	2,814,834	11.67	1,540,981	8,139,746	3,861,589	12,001,335
Mecklenburg, 1919	313,806	4,062,705	12.85	13,112,770	23,133,825	15,082,064	38,217,889
Mecklenburg, 1920	314,277	14,423,868	67.31	56,054,830	93,500,878	33,585,655	127,086,533
Mitchell, 1919	128,935	718,301	5.57	76,756	795,057	650,049	1,445,106
Mitchell, 1920	138,372	4,027,771	29.11	278,263	4,340,208	1,133,117	5,473,325

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

	Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
	Montgomery, 1919...	288,986	1,766,532	6.11	629,642	2,858,839	2,478,702	5,337,541
77	Montgomery, 1920...	289,109	5,090,834	17.60	1,738,731	6,830,165	3,091,370	9,921,535
	Moore, 1919.....	415,165	3,178,355	7.65	1,871,452	5,434,221	3,005,237	8,439,458
	Moore, 1920.....	401,486	8,004,405	19.93	5,240,261	15,604,749	5,224,372	20,829,121
	Nash, 1919.....	335,415	3,878,799	11.50	3,219,117	7,865,680	8,391,768	16,257,448
	Nash, 1920.....	323,886	20,867,100	67.82	9,818,482	36,300,096	12,130,528	48,430,624
	New Hanover, 1919.....	92,962	2,100,440	22.59	10,087,280	14,941,453	5,406,709	20,348,162
	New Hanover, 1920.....	114,132	3,171,311	28.05	14,309,005	37,517,377	12,528,021	50,045,398
	Northampton, 1919.....	318,278	3,705,130	11.64	623,790	4,463,235	4,436,914	8,900,149
	Northampton, 1920.....	331,152	11,257,234	33.99	1,110,300	12,367,534	4,772,232	17,139,766
	Onslow, 1919.....	342,132	2,846,648	8.32	489,741	4,772,360	2,651,357	7,423,717
	Onslow, 1920.....	416,808	7,308,697	20.69	992,565	10,807,997	2,756,647	13,564,644
	Orange, 1919.....	241,018	1,951,875	7.78	1,051,230	3,916,209	3,078,757	6,994,966
	Orange, 1920.....	244,404	7,866,281	32.19	2,219,764	10,086,045	6,222,234	16,308,279
	Pamlico, 1919.....	197,344	1,291,248	6.51	217,596	1,519,204	832,713	2,351,917
	Pamlico, 1920.....	190,034	4,008,264	21.09	457,130	5,546,213	1,410,210	6,956,423
	Pasquotank, 1919.....	148,427	1,678,547	11.31	2,136,000	4,120,322	2,922,259	7,042,581
	Pasquotank, 1920.....	137,882	5,016,537	33.04	2,984,095	13,421,447	5,980,231	19,401,678
	Pender, 1919.....	309,026	1,801,116	5.83	241,571	2,219,798	1,616,117	3,835,915
	Pender, 1920.....	451,802	7,307,962	16.17	633,713	8,492,798	2,019,023	10,511,821
	Perquimans, 1919.....	151,630	1,431,991	9.44	473,929	2,009,068	1,684,783	3,693,851
	Perquimans, 1920.....	135,126	4,579,632	33.89	1,035,330	5,739,600	2,359,005	8,098,714
	Person, 1919.....	248,726	1,907,348	7.67	491,389	2,633,069	2,368,806	5,001,875
	Person, 1920.....	254,630	10,097,690	39.65	1,751,638	12,452,278	3,624,517	16,076,795
	Pitt, 1919.....	377,008	4,386,655	11.64	2,896,842	7,464,487	8,655,875	16,120,362
	Pitt, 1920.....	395,113	33,378,935	87.54	10,810,632	44,254,598	17,617,391	61,871,989
	Polk, 1919.....	131,161	1,031,414	7.86	630,604	1,662,018	759,328	2,421,346
	Polk, 1920.....	130,925	3,231,221	24.61	403,878	5,043,541	3,691,363	8,734,904

Randolph, 1919	450,446	3,426,965	7.61	1,189,826	5,390,639	4,514,894	9,905,333
Randolph, 1920	489,717	13,352,406	27.27	2,842,531	18,468,305	7,049,532	25,517,837
Richmond, 1919	271,037	1,733,510	6.39	1,610,266	5,067,210	3,581,552	8,648,762
Richmond, 1920	298,155	8,335,941	28.63	5,335,137	18,450,390	8,000,022	26,450,412
Robeson, 1919	508,290	5,661,400	11.14	2,326,580	9,063,675	8,063,294	17,126,969
Robeson, 1920	544,258	41,507,181	76.23	3,410,336	48,024,939	16,401,672	64,426,611
Rockingham, 1919	345,078	3,213,287	9.08	2,215,162	8,399,673	7,917,904	16,317,477
Rockingham, 1920	354,743	20,502,620	57.79	17,139,898	47,813,378	24,561,986	72,375,364
Rowan, 1919	315,694	3,506,437	11.11	4,975,488	9,727,065	6,753,857	16,480,922
Rowan, 1920	319,701	14,383,945	46.00	14,703,488	38,548,806	8,802,070	47,350,876
Rutherford, 1919	323,305	2,660,608	8.23	635,344	4,331,111	3,204,275	7,535,386
Rutherford, 1920	326,699	12,869,438	39.33	717,300	19,912,642	8,824,619	28,737,261
Sampson, 1919	530,046	3,850,395	7.26	678,681	4,539,778	4,864,205	9,403,983
Sampson, 1920	578,092	16,169,478	28.00	2,181,805	22,717,990	9,305,331	32,023,240
Scotland, 1919	190,468	2,194,402	11.52	708,682	3,661,138	2,732,179	6,393,317
Scotland, 1920	190,381	15,478,175	81.30	3,520,521	21,319,716	7,693,755	29,013,471
Stanley, 1919	228,929	1,794,885	7.84	1,109,296	4,727,603	3,983,469	8,711,172
78 Stanley, 1920	245,668	10,574,057	43.04	3,745,636	21,225,000	10,608,893	31,833,893
Stokes, 1919	274,915	2,364,379	8.60	212,216	2,618,965	3,512,501	6,131,266
Stokes, 1920	286,724	10,328,827	36.02	544,334	10,873,161	4,310,595	15,183,756
Surry, 1919	330,406	3,850,503	11.65	1,737,885	5,796,250	5,375,888	11,172,138
Surry, 1920	347,849	13,476,044	38.72	5,053,375	18,529,419	7,845,186	26,374,605
Swain, 1919	346,039	2,275,531	6.56	348,794	2,657,925	1,908,527	4,566,452
Swain, 1920	346,196	6,057,460	17.49	596,960	6,830,920	2,619,045	9,449,965
Transylvania, 1919	197,595	1,518,091	7.68	382,984	2,044,250	1,308,115	3,352,365
Transylvania, 1920	198,554	4,684,341	23.59	462,625	5,334,466	2,597,049	7,901,515
Tyrrell, 1919	192,927	974,680	5.05	117,342	1,105,114	645,502	1,750,616
Tyrrell, 1920	169,491	2,917,151	17.21	235,845	3,152,996	1,069,834	4,222,830
Union, 1919	389,203	2,975,210	7.65	1,714,823	5,092,979	6,205,125	11,298,104
Union, 1920	392,429	15,605,830	39.77	4,671,356	21,444,971	10,172,675	31,617,646
Vance, 1919	161,724	2,103,131	13.00	1,776,205	4,550,421	5,579,165	10,121,596
Vance, 1920	167,208	9,428,756	56.39	5,553,505	17,856,566	8,662,735	26,519,301
Wake, 1919	531,678	5,703,809	10.73	11,038,122	19,342,872	12,302,850	31,645,722
Wake, 1920	506,877	23,181,356	45.73	25,987,726	53,739,885	18,726,589	73,900,221
Warren, 1919	255,618	2,568,511	10.49	875,602	3,556,222	3,828,467	7,384,689
Warren, 1920	277,193	10,277,899	36.89	1,926,632	12,373,446	4,851,406	17,224,852
Washington, 1919	200,868	1,586,739	7.90	501,569	2,180,780	1,556,516	3,737,296

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Washington, 1920.....	136,375	6,118,254	26.88	1,010,540	7,468,873	2,231,456	9,700,329
Watauga, 1919.....	207,881	1,632,998	7.85	140,420	1,773,418	1,938,899	3,712,317
Watauga, 1920.....	217,097	6,750,358	31.09	501,234	8,820,897	2,419,708	11,240,605
Wayne, 1919.....	340,735	3,771,064	11.07	4,026,567	8,449,151	9,173,853	17,623,004
Wayne, 1920.....	339,270	27,607,644	81.37	14,860,093	47,323,132	17,666,582	64,989,714
Wilkes, 1919.....	467,528	2,991,286	6.40	668,155	3,780,058	3,014,511	6,794,569
Wilkes, 1920.....	469,130	7,999,140	17.05	880,767	12,352,003	4,357,959	16,709,962
Wilson, 1919.....	223,631	2,866,661	12.82	3,109,243	6,323,509	9,005,000	15,328,509
Wilson, 1920.....	236,077	26,715,771	113.17	13,685,529	40,401,300	20,069,562	60,470,862
Yadkin, 1919.....	211,977	1,999,500	9.43	218,745	2,233,845	1,926,589	4,160,434
Yadkin, 1920.....	212,459	8,992,113	42.32	659,503	9,651,616	2,772,947	12,424,563
Yancey, 1919.....	174,935	1,142,880	6.53	83,070	1,335,074	1,204,819	2,539,893
Yancey, 1920.....	184,300	6,981,404	37.88	126,724	7,144,065	2,583,189	9,727,254

78½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC AND YADKIN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Affidavit of Murray R. Hubbard in Support of Complainant's Application for Interlocutory Injunction.

S. R. Prince,
Solicitor for Complainant.

L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
Of Counsel.

79 *Affidavit of Murray R. Hubbard.*

Filed Dec. 24, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

ATLANTIC AND YADKIN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Affidavit of Murray R. Hubbard.

STATE OF GEORGIA,
County of Fulton:

Murray R. Hubbard, being first duly sworn, says:

That he is Tax Commissioner for the plaintiff, Atlantic & Yadkin Railway Company, as well as for Southern Railway Company, the Yadkin Railroad Company, and the High Point, Randleman, Asheboro & Southern Railroad Company, and, as such Tax Commissioner, is familiar with the facts and things hereinafter set out:

80 1. That the amount of plaintiff's Property Investment Account reported by it to the Interstate Commerce Commission under the provisions of Section 15-*a* of the Transportation Act was $2,690,349.

2. That the total assessment of $101,960,413 placed by the State Tax Commission in 1920 upon property of plaintiff, Southern Railway Company and two other railroad companies was 207.8% of the assessment of the same properties for 1919 and several previous years. That after the assessment of $101,960,413 finally was fixed by said Tax Commission, affiant was asked when in Raleigh by Mr. Maxwell, one of the Commissioners, and by Mr. Griffin, the Revaluation Clerk of the Commission, if he would perform the clerical work incident to the allocation of the assessment set out to plaintiff, to the several owned and leased lines of Southern Railway Company, to the Yadkin Railroad Company and to the High Point, Randleman, Asheboro and Southern Railroad Company. That in said conference with Messrs. Maxwell and Griffin the method of allocation was determined by them and that affiant's work in connection therewith was merely clerical. That thereafter on July 21, 1920, affiant, as stated in the answer on page 5, wrote a letter to Mr. Griffin, the Revaluation Clerk of the Commission, to which was attached a statement setting out the values allocated to plaintiff and to the other railroads in
81 accordance with the plan agreed upon by Messrs. Maxwell and Griffin as aforesaid. That the assessment of $4,104,710 placed upon the property of plaintiff was not suggested by affiant in any way except that affiant did make the figures according to the aforesaid plan. That plaintiff's assessment for 1919 was $12,262.96 per mile which, multiplied by 207.8% made the 1920 assessment of $25,482.43 per mile and this being multiplied by plaintiff's mileage in North Carolina showed a total assessment for 1920 of $4,104,710. Affiant further says that in said letter he wrote the quotation shown on page 7 of the answer without intention of suggesting of acknowledging that plaintiff's assessment was too low but only because of the fact that the tax rates in the several counties traversed by plaintiff and by the North Carolina Midland were materially lower than the tax rates in counties traversed by Southern Railway for which reason it would follow that the total amount of taxes paid by Southern Railway Company and all its affiliated lines in North Carolina would be reduced if values were imported into counties levying smaller tax rates. Illustrative of how this would have worked out, affiant says that property of Southern Railway Company was subject to an average county levy of about 81c. plaintiff's property was subject to an average county levy of about 77c. and the North Carolina Midland property was subject to an average county levy of about 65c.

82 3. Affiant says that the average assessed value in 1920 per acre of lands in the several counties traversed by plaintiff was as follows:

Chatham	$23.09 per acre.
Forsyth	58.86 " "
Guilford	52.98 " "
Lee	41.15 " "
Randolph	27.27 " "
Rockingham	57.79 " "
Stokes	36.02 " "
Surry	38.72 " "

And affiant further says that in estimating the value of plaintiff's right of way land he fixed the value thereof at $100 per acre when the average value of lands in said counties assessed by the State Tax Commission was much less than one-half that amount.

4. Affiant says that the so-called intangible value of a railroad arises either from the fact that the market value of its stocks and bonds is greater than the value of the physical property or because of the fact that its net earnings capitalized at a fair percentage show a value for the property greater than the value of the physical property. That under the method generally used in assessing railroads the plan is to deduct the value of the physical property from the value placed upon the entire property and in such case the excess value is
83 found to be the value of the intangible property. Affiant says that, tested by these rules, the assessment of $4,104,710 is far in excess of any value that can reasonably be found for plaintiff's property.

(Signed) MURRAY R. HUBBARD.

Subscribed and sworn to before me this 21st day of December, 1921.

(Signed) J. W. SMITH,
Notary Public.

84 *Motion of Plaintiff to Amend Bill and Order Denying Motion.*

Filed —— 28, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY CO., Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Motion to Amend.

Comes the complainant and moves the Court for leave to amend its bill in accordance with the amendment hereto attached a copy of which has been served upon counsel for the defendants.

Dated January 24, 1922.

S. R. PRINCE,
Solicitor for Complainant.

The foregoing motion of complainant to amend its bill in this cause came on by consent of all parties to be heard by Circuit Judge Edmund Waddill and District Judges James E. Boyd and Henry G. Connor, the Court convened under Section 266 of the Judicial Code of the United States for the hearing of the complainants' application for an interlocutory injunction, and the Court, having duly considered the said motion and being of the opinion that said amendment should not be allowed,

It is ordered and decreed that complainant's motion to amend be and it is denied.

EDMUND WADDILL, JR.,
Circuit Judge.

JAS. E. BOYD,
H. G. CONNOR,
District Judges.

85 *Amendment to Bill, Adding Secs. 8½ and 14½.*

Filed January 24, 1922.

In the District Court of the United States for the Western District of North Carolina.

ATLANTIC & YADKIN RAILWAY CO.

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

Atlantic & Yadkin Railway Co. by leave of Court first had and obtained, amends its bill of complaint filed herein by adding the following sections:

(8½) That the undervaluation of real and personal property in North Carolina, other than the property of railroads, including that of this plaintiff, prior to and since the enactment of the Revaluation Act and Section 28 (*a*) of the Machinery Act of 1921, has been systematic and intentional with the design to discriminate against plaintiff and other railroads and cast upon them an undue share of the burdens of taxation for the purpose of relieving such other property of its just proportion of taxation, and by this systematic and intentional undervaluation of real and personal property, the property of plaintiff has been valued higher than that of individuals and other corporations, and plaintiff avers that such discrimination is in contravention of Article 5, Section 3 of the Constitution of North Carolina and of the Fourteenth Amendment to the Constitution of the United States.

(14½) Plaintiff shows that Schedule D of the Revenue Act of 1921, known as the Income Tax, is unconstitutional and void for the following reasons:

(*a*) For that it is not a tax on income, but is in truth and in fact a tax upon operating income derived by railroad companies from interstate and intrastate commerce, and for the reason that
86 from the operating revenue arrived at under the said law there are not allowed many of the deductions required by the Standard Classification of Accounts of the Interstate Commerce Commission, which Standard Classification of Accounts was promulgated by the said Interstate Commerce Commission under the provisions of the Interstate Commerce Act passed by Congress, and which are so regulated as to ascertain in what is the net income of railroads engaged in interstate commerce. Complainant says that among other items which are directed to be deducted by railroads in interstate commerce from operating income, in order to arrive at net income, are the following:

Rent for leased roads,
Joint facility rents,
Miscellaneous rents,
Separately operated properties—loss,
Interest on unfunded debt,
Income transferred to other companies,
Miscellaneous income charges,
Interest on funded debt,

and avers that in order to ascertain the net income of railroads engaged in business in interstate commerce, as plaintiff is, according to said Standard Classification of Accounts of the Interstate Commerce Commission, promulgated as aforesaid, it is necessary to deduct the above items.

(*b*) The method of arriving at net income stated in Section D of the said Act as applied to this interstate carrier, is not net income as the same is defined and arrived at under the Standard Classification of Accounts of the Interstate Commerce Commission, in that the Standard Classification of Accounts directs that there shall be deducted from the net operating income not only the deductions provided for in said law of North Carolina, but in addition thereto the following:

Rent for leased roads,
Joint facility rents,
Miscellaneous rents,
Separately operated properties—loss,
Interest on unfunded debt,
Income transferred to other companies,
Miscellaneous income charges,
Interest on funded debt.

87 The result is that the machinery provided for by the said statute for the ascertainment of net income does not in truth and in fact produce net income, which under Section 101 it is declared to be the purpose of the said Act to tax. Furthermore, the method outlined in said law for arriving at net income produces a figure which is not in truth net income, but which contains in part gross income, and in so far as it does include gross income, which gross is derived from interstate commerce, said tax is a direct burden upon interstate commerce and is void under the Commerce Clause of the Constitution of the United States.

(*c*) Plaintiff further says that the said statute is unconstitutional and void for that in computing net income it permits corporations other than this plaintiff and like corporations named in said Section 202 to make the many deductions set forth in Section 306 of said Act. This discrimination in favor of corporations and individuals against railroad companies in making deductions in order to ascertain net income violates the Constitution of North Carolina and the United States.

(*d*) Plaintiff further says that the statute is violative of Article 5, Section 3 of the Constitution of North Carolina, for that it does not levy upon railroads and other public service corporations named in said Section 202 a tax on net income, but levies a tax upon operating revenue derived from interstate and intrastate commerce and does not permit the deductions necessary and incidental to the business of plaintiff and expended by it from said income in order to determine net income, and is in violation of the Interstate Commerce Clause of the Constitution of the United States in that it permits a tax as an income tax to be placed on gross income derived from interstate commerce, thereby burdening interstate commerce.

(*e*) That said so-called Income Tax Law violates the Transportation Act of Congress and the Interstate Commerce Act in
88 that it seeks to prescribe a method of accounting by this interstate carrier, when said Acts of Congress have delegated the power to prescribe said accounting to the Interstate Commerce Commission and the said Commission has prescribed and directed that this plaintiff and other interstate carriers keep their accounts in accordance with the methods so prescribed by it.

S. R. PRINCE,
Solicitor for Plaintiff.

STATE OF NORTH CAROLINA,
County of Guilford:

Murray R. Hubbard, being first duly sworn, deposes and says: Atlantic & Yadkin Railway Co., plaintiff herein, is a corporation and that he is one of its officers, to-wit: Tax Commissioner; that he has read the foregoing amendment to the bill of complaint and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein set forth on information and belief and that as to those matters he believes it to be true.

MURRAY R. HUBBARD.

Subscribed and sworn to before me this 24th day of January 1922.

[SEAL.]

R. L. BLAYLOCK,
Clerk U. S. Court.

88½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

ATLANTIC AND YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Affidavits in Support of Plaintiff's Application for Interlocutory Injunction.

S. R. Prince,
Solicitor for Plaintiff.

L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
Of Counsel.

89 *Affidavit of Murray R. Hubbard.*

Filed Dec. 24, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Affidavit of Murray R. Hubbard in Support of Plaintiff's Application for Interlocutory Injunction.

STATE OF GEORGIA,
County of Calhoun:

Murray R. Hubbard, being first duly sworn, says:
That from 1900 to 1904 he was Secretary of the Kentucky Railroad Commission and from 1904 to date has been continu-
90 ously in the service of either the Southern Railway Company or its affiliated lines or the United States Railroad Administration, his duties being to return for taxation the property of the

Southern Railway Company and its affiliated lines in the several states traversed by them and to appear before the tax boards of the several states in the manner of the assessment thereof. At the present time he is Tax Commissioner of Southern Railway Company and resides at Atlanta, Georgia.

That under the Revaluation Act of North Carolina, approved March 11, 1919, the property of every citizen of the State was to be valued at its true value in money, and in accordance with Section 31 of said Act there was to be made a complete revaluation of the property of railroads. The Tax Commission made a tentative assessment for 1920 of Southern Railway's properties, the Southern Railway Company excepted thereto, and at the hearing affiant proved that the net earnings of Southern Railway Company for the System as a whole showed an average for the five years of $21,889,-648.00, which sum, capitalized at 7%, showed a valuation for the System of $312,709,260.00 and a valuation for North Carolina of $68,170,618.00 under the gross earnings ratio of 21.8%. Affiant also proved the total par value of the outstanding stocks and bonds of Southern Railway Company and offered to agree with said Tax Commission upon the fair market value of said stocks and
91 bonds, if the Commission should desire to make the assessment under that plan. Affiant proved the amount of gross revenue and operating expenses allocated to the State of North Carolina for the five year period 1919-1915 and also the amount of taxes paid in said State, and that the average annual net earnings so arrived at during said five year period were $6,117,625.00, but affiant made proof in connection therewith of the fact that operating expenses so allocated to North Carolina were understated and that the average net earnings of $6,117,625.00 was not a fair basis for valuation of the property in North Carolina and gave at length the reasons therefor, which reasons are briefly those set out in the bill filed herein. Affiant further offered proof that the annual return upon capital invested in banking, merchandise, and other enterprises in North Carolina was at least 8%; that no railroad securities yielding 6% were at the time selling for their par value in the market; that railroads enjoying the highest credit of any in the country including Southern Railway Company were paying as much as 7½% for money, and that these facts should be considered by the Commission in determining what was a fair percentage of capitalization. The Tax Commission concluded to use a plan of capitalizing the net earnings in order to arrive at the true value in money of the property of Southern Railway Company in North Carolina and at first found a value, arrived at by capitalizing at 7% North Carolina net operating revenue for years 1919-1915 without making de-
92 duction for taxes paid in the State of North Carolina, which, for the year 1919, amounted to more than nine hundred twenty-two thousand dollars. The value thus arrived at was $103,-730,071.00, but affiant protested so vigorously against the failure to make a deduction of the amount of taxes paid that the Tax Commission thereafter changed its plan and arrived at the assessment of

$101,960,400.00 by capitalizing the average net earnings in North Carolina for the five years 1919-1915, amounting to $6,117,625.00, but changed the percentage of capitalization to 6% instead of 7% which had been used before deducting taxes. That said sum, $101,-960,400.00 was determined by the Tax Commission to be the true value in money of the property in North Carolina of Southern Railway Company and the independently operated lines, Atlantic & Yadkin Railway Company, High Point, Randleman, Asheboro & Southern Railroad Company and Yadkin Railroad Company, and from said sum of $101,960,413.00 the Tax Commission fixed and deducted a valuation of $4,104,710.00 for the Atlantic and Yadkin Railway Company; of $688,895.00 for the High Point, Randleman, Asheboro and Southern Railroad Company; and of $561,114.00 for the Yadkin Railroad Company, after which deductions it found the valuation of Southern Railway Company to be $96,605,694.00. Affiant says that said valuation of $96,605,694.00 finally adopted was not reduced at all from a figure in excess of $100,000,000 by a
93 due consideration of the capitalization of plaintiff's net income for the State of North Carolina at 6 per cent, nor of the market value of the plaintiff's stocks and bonds and other securities. Affiant says that said Tax Commission did nothing other than to find that $6,117,625.00 was average net earnings allocated to North Carolina for the five years 1919-1915; that 6% was the figure for capitalization, and that a 6% capitalization of $6,117,625.00 showed for North Carolina a valuation of 101,960,413.00 for Southern and the other lines before mentioned, and then fixed the respective valuations set out for each of said railroads, of which total valuation the value of the Southern was found to be $96,605,694.00. Notwithstanding the proof above set forth and with no proof to the contrary before the Commission, it adhered to its assessment of $96,605,-694.00, upon which amount affiant thereafter paid taxes for the year 1920; said payments were made under protest.

That the Commissioner of Revenue of the State of North Carolina on June 21, 1921, heard the application of affiant for a review of Southern Railway's 1921 assessment. At this hearing affiant made proof as follows:

(1) As to error of method used in 1920 by the State Tax Commission in fixing the value of its property at $96,605,694.00, as set forth above.

(2) That 6%, the figure used for capitalization of net income, was too low.

(3) That the market values of railroad securities in 1921
94 were materially less than on May 1, 1919. That the cost of materials used generally in railroad construction was much less in 1921 than in 1920 or at May 1, 1919.

(4) That the average net income allocated to North Carolina should not be used for capitalization in order to determine the value of the property in the State because in said allocation under existing

methods the operating expenses were understated, with the result that net income was overstated.

(5) That the average annual net income of Southern Railway Company as a whole for the five year period 1920-1916 was $21,-274,027.89. That the true value in money of the property could be fairly ascertained by capitalizing the aforesaid sum at 8% or certainly at not less than 7% and then apportioning to North Carolina either a road mileage or gross earnings proportion of the amount thus ascertained to be the true value in money of the property in all states. That the values thus ascertained for the system as a whole were as follows:

Capitalization at 8%	$265,925,349.00
Capitalization at 7%	303,914,684.00

And that the true value in money of the property in North Carolina thus ascertained would be as follows:

95 Eight per cent capitalization—

On road mileage basis 20.1%	$53,450,995.00
On gross earnings basis 22%	58,503,577.00

Seven per cent capitalization—

On road mileage basis 20.1%	$61,086,851.00
On gross earnings basis 22%	66,861,230.00

(6) That the application of plaintiff, dated May 24, 1921, to the Commissioner of Revenue for a review and a reduction of the aforesaid assessment of $101,964,013.00 (of which total the valuation of Southern was $96,605,694.00) stated the affiant's belief that on May 1, 1921, the value of the Southern's owned, leased, and operated lines in North Carolina (which included the Atlantic & Yadkin Railway, High Point, Randleman, Asheboro & Southern Railroad, and the Yadkin Railroad) was $68,170,618.00. That at the hearing of said application before the Commissioner of Revenue on June 21, 1921, affiant explained to said Commissioner that the valuation of $68,170,618.00 was determined by capitalizing net earnings for the years 1919-15, which were the only figures available to him upon May 24, 1921. That upon June 21, 1921, the net earnings for the years 1920-16 were known to affiant to be $21,274,027.89, and that affiant then believed and stated the highest true value which reasonably could be fixed for the Southern and aforesaid railroads in North Carolina was $66,861,230.00, as before set
96 out. Affiant states further that at the time of such presentation to the Commissioner of Revenue the tentative value of the property of Southern Railway made by the Interstate Commerce Commission, as set forth in the bill on pages 24 and 25 was not known to him.

Affiant says that under date of July 21, 1921, the Commissioner of Revenue advised him by letter that he had arrived at a value of

the Southern Railway's properties of $102,504,843.00. That value included other independently operated lines, which, being deducted, left as a value of the Southern Railway's property in North Carolina the sum of $96,605,694.00 which said value was further reduced by reductions in real estate off the main right of way to the final figure of $96,306,357.00. Affiant gave notice to the Commissioner of Revenue of an appeal to the State Board of Equalization. He was thereafter advised that the law did not permit a hearing by the State Board of Equalization and the matter was reheard by the Commissioner of Revenue and again proof was offered on the various points above set forth to show the excessive valuation of Southern Railway's property. On August 31, 1921, the Commissioner of Revenue advised affiant that the apportionment of the assessment to Southern Railway Company in North Carolina amounted to $96,306,357.00. The Commissioner of Revenue has not advised affiant of what part of the above total is the physical or tangible property and what part the franchise, but affiant was advised by the tax officer of
97 another railroad in North Carolina that the Tax Commission had in response to an inquiry from him advised him that the Southern's tangible assessment for 1920 was $78,778,169.00 and intangible, $17,528,188.00.

That in those states in which affiant appears before the State Tax Boards in which the capitalization of net income plan is used to ascertain the value of the property, the percentage figures used by assessing boards in recent years have been as follows:

Georgia	8 %
Alabama	8 %
Mississippi	8 %
Louisiana	8 %
Tennessee	10 %
Kentucky	7 %
Ohio	8½%
Indiana	8 %

Affiant says that the total taxes paid by Southern Railway Company in the State of North Carolina for state, county, and municipal purposes for 1920 were $874,888.73, and if the present assessment remains, then, due to increased county rates, he estimates the actual tax to be paid will exceed one million dollars.

Affiant further says that in several of the states traversed by Southern Railway ad valorem taxes are paid upon the full value of the property, tangible and intangible, but in no one of said states
98 is a franchise or privilege tax paid based on the valuation upon which ad valorem taxes are paid. That the method used for ascertainment of the value of franchise or intangible property is to deduct the assessed value of the tangible property from the amount determined to be the total value of the property within the state and the remainder is the intangible value.

That under date of September 22, 1921, Honorable Baxter Durham, State Auditor, certified to Southern Railway Company the fran-

chise or privilege tax assessed under the provisions of Section 82 (6½) of the Revenue Laws, Chapter 34, North Carolina Public Laws of 1921, in the aggregate amount of $96,306.35.

Affiant says it is true, as stated in the answer, that plaintiff's mileage in North Carolina of first Main Line is 1,093.02; of Second Main Line, 175.74; and of Side and Yard Tracks, 373.04; and of all Tracks, 1,641.80. Affiant also says that in all states First Main Line operated is 6,971.08; Second Main Line, 726.04; Side and Yard Tracks, 2,307.49; and of all Tracks, 10,004.61. That if All Track Miles are to be used as a proper basis for distribution, and Atlantic Coast Line Trackage in North Carolina (121.46) also is to be considered, then the percentage applicable to North Carolina would be 17.62%. Affiant says it is also true, as stated in the answer, that neither the mileage of 1,093.02, First Main, nor of 1,641.80, All Tracks, includes independent lines in North Carolina, con-
99 trolled by ownership of stock, and that the North Carolina mileage of said railroads is First Main, 357.43; Second Main, none; Side and Yard Tracks, 65.19; Total All Tracks, 422.62, addition of which would make total mileage in North Carolina of railroad owned, operated, leased and controlled of First Main, 1,571.91; of Second Main, 175.74; of Side and Yard Tracks, 438.23; and of All Tracks, 2,185.88, (which figures include Atlantic Coast Line Trackage Rights in North Carolina over 121.46 miles). Affiant says if railroads in North Carolina, controlled by ownership of stock, are to be considered, then it is also proper to include and consider the mileage of railroads so controlled in all other states, which are as follows: First Main, 3,084.67; Second Main, 257.22; Side and Yard Tracks, 1,137.12; All Tracks, 4,479.01, and that the comparative showing thereof as to controlled lines only would be:

	1st main.	2nd main.	Side & yard.	All tracks.
Other States ..	3,084.67	257.22	1,137.12	4,479.01
N. Carolina ..	357.43	.....	65.19	422.62
Total ..	3,442.10	257.22	1,202.31	4,901.63
N. C. Proportion	10.38%	0%	5.42%	8.62%

Affiant further says that if the mileages of plaintiff in North Carolina and in other states, and of plaintiff's controlled lines in North Carolina and in other states should be considered and all consolidated the comparative showing thereof would be as follows:

	1st main.	2nd main.	Side & yard.	All tracks.
All States	10,413.18	983.26	3,509.80	14,906.24
N. Carolina ..	1,571.91	175.74	438.23	2,185.88
N. C. Proportion	15.10%	17.87%	12.49%	14.66%

100 Affiant further says that these comparative showings absolutely refute the statement in the answer that the use of plaintiff's First Main Track in North Carolina (1,093 miles) for allocating values to that state is unfair. Affiant says it is the general custom in other states, where second, side and yard tracks are not separately assessed, to use first main line mileage as a basis for allocating values. And affiant says the comparative statements before set out are only mileage figures whereas, if bases other than mileage were used, the favor shown North Carolina by exclusion of controlled lines would be more apparent.

Affiant says that the action of the Tax Commission in 1920 did not indicate that any consideration whatever was given to character of plaintiff's roadbed, fixed equipment, miles of double track, or any other factor except plaintiff's gross and net earnings allocated to North Carolina; that affiant offered proof to said Tax Commission in 1920 and to the Commissioner of Revenue in 1921 that plaintiff's operating expenses in North Carolina were not and could not be kept with mathematical accuracy, and were understated. But that notwithstanding said evidence and without regard for other factors set out in the answer the Tax Commission arrived at a tentative valuation in North Carolina by capitalizing at 7% (without deducting taxes paid in North Carolina) average net earnings of four years, 1919-1916, of $7,261,105.59, or a tentative valuation of $103,730,-
101 071.00. And that said Commission arrived at its final valuation by capitalizing at 6% average net earnings of five years, 1919-1915, of $6,117,624.75, or a final valuation of $101,960,413.00 as before set out herein.

Affiant says that not only would capitalization of net earnings in all states not result in the exportation of tax values from North Carolina but that method would result in the importation of tax values to North Carolina unless due consideration were given to the fact that plaintiff owns and operates large and costly terminals and yards at such points as Alexandria, Va., Norfolk, Va., Charleston, S. C., Atlanta, Ga., Knoxville, Chattanooga and Memphis, Tenn., Birmingham, Ala., and E. St. Louis, Ill.

Affiant says plaintiff owns no tracks in Florida, as referred to in the answer, but operates into Jacksonville over Atlantic Coast Line tracks and pays taxes in that state only upon assessment on rolling stock of about $70,000.00.

Affiant says that the statement in the answer, in the last paragraph on page 18, that real estate was raised by revaluation in 1920 three times and railroad property twice their former assessments is substantially correct.

That on Aug. 10, 1920, the State Tax Commission made its report on revaluation to His Excellency T. W. Bickett, Governor of North Carolina, in which on page 5 appears the following:

102 "Valuation of Railroads.

One frequent criticism has been that the valuation of railroad properties could not be increased, it being understood that they were

assessed at full value before. Our report shows that railroad properties have been increased from $125,417,618 to $250,537,158, or more than doubled. Under the new Interstate Commerce Act the Interstate Commerce Commission is required to make rates that will yield an average return of not less than five and one half per cent upon the railroad lines as a whole, and to find the fair value of these properties as the basis for making the new rates. That Commission has not yet determined the basis on which the value of the railroad lines will be finally fixed. It will take several years to complete the physical valuation of all of these properties. Pending this final valuation the railroad lines have submitted to the Interstate Commerce Commission what is known as their investment accounts and have asked that this basis of value be used for determining the scales of rates and amount of return they are entitled to earn on their properties It seems clear to us that the time has come when the value upon which a railroad or public utility is permitted to earn a return in the value upon which it should pay taxes to this State. In either case the purpose is to find the fair value of the property. So that generally our valuation of the railroad lines in this State is based upon a mileage proportion of their investment account, which they have asked the Interstate Commerce Commission to adopt as
103 the basis for making their rates, and to this mileage proportion we have added the value which we find to represent the intangible value of their North Carolina lines, based upon the volume of business in this State greater than the average volume of traffic on their lines as a whole. * * * The new assessment of railroads does not represent as great an increase as the average increase of other property, for the reason that they were assessed relatively higher than other property before, but we anticipate that it will meet the fair demands of public opinion when it is known that they are assessed like other property at their full value, and upon a valuation quite as high as that upon which they are asking to be permitted to earn a return."

Said Commission also reported as to "Real Estate Values" on page 4 of said report as follows:

"So that values as of May 1, 1919, became relatively conservative values, and we know by numerous tests that generally valuations have been conservatively made as of that date.

The increase in real estate values is large, but when subjected to any reasonable test they are shown to be conservative. In this connection it is interesting to note the increase in the total value of farm products produced in this State since 1915, when real estate was last valued:

Total value farm products, 1915	$197,185,000
Total value farm products, 1919	683,168,000."

104 Said Commission later on Dec. 31, 1920, made another report to the Governor which among other things and under "Real Estate Values," page VII, was as follows:

"They were made with reference to actual value on May 1, 1919, and under instructions to use such values with reference to that date as were deemed to be stable. The peak of speculative values in lands was reached in the fall of 1919, after the tobacco and cotton markets for that season developed unprecedentedly high prices for these products, and continued into the first half of 1920. The United States Department of Agriculture makes an annual appraisal of the average value of farm lands in all states. Their estimate of 1919 average value for this State was $47.00 per acre; for 1920, $75.00 per acre. The revaluation average was $38.94, or $8.00 per acre less than the 1919 average. This demonstrates that the revaluation values did not approximate the peak of speculative values. We should be equally cautious to avoid the other extreme of basing values for the future upon a congestion that has temporarily almost destroyed the market for real property."

Affiant further says it is not true, as stated in paragraph 2 on page 24 of the answer, that the Interstate Commerce Commission has fixed rates for plaintiff upon a basis which shows for plaintiff property values in North Carolina of $111,308,323.00. Affiant
105 also says that in the action of the Interstate Commerce Commission referred to no property value of any interstate railroad was allocated to any state, nor has it even appeared that any certain value was assigned to any one railroad but that a lump sum valuation was arrived at for all railroads.

Affiant is so informed and believes it to be true that the records in the office of the North Carolina Commissioner of Revenue show that the interstate Commerce Commission has found the reproduction cost, less depreciation, of the entire property in Virginia and North Carolina of Norfolk Southern Railroad to be $26,028,366. That the total mileage of Norfolk Southern is 900.543, of which 790.264 miles, or 87.754%, are in North Carolina. That the assessment fixed in 1921 for Norfolk Southern by the Commissioner of Revenue is $22,840,932, or 87.754% of the Interstate Commerce Commission valuation of $26,028,366 before set out.

Affiant is informed and believes it to be true that the records in the office of the North Carolina Corporation Commission show that the Interstate Commerce Commission has found the reproduction cost, less depreciation, of Winston-Salem Southbound Railway (all in North Carolina) to be $4,753,006 and the value of its land to be $378,088, an aggregate of $5,131,094. That the valuation of said railway by the Commissioner of Revenue in 1921 is fixed at
106 $4,792,120, or $238,974 less than the Interstate Commerce Commission valuation before set out.

(Signed) MURRAY R. HUBBARD.

Subscribed and sworn to before me this 19th day of December, 1921.

(Signed) J. W. SMITH,
Notary Public, Fulton County, Ga.;
Notary Public, State at Large, Georgia.

My Commission Expires Oct. 5, 1923.

107 *Affidavit of A. H. Plant in Support of Plaintiff's Application For Interlocutory Injunction.*

Filed Dec. 24, 1921.

DISTRICT OF COLUMBIA,
City of Washington:

Personally appeared before me, a Notary Public in and for the District of Columbia, City of Washington, A. H. Plant, a resident of the aforesaid District and City, who, upon being duly sworn, deposes and says that:

(1) He now is and since March 1, 1920, has been assistant to President of Southern Railway Company. From January 1, 1898, to June, 1918, he was the executive accounting officer of Southern Railway Company. From June, 1918, to February 29, 1920, he was Federal Auditor for the United States Railroad Administration and as such directed the accounting for operations of Southern Railway Company's properties which, during that period, were operated by the United States Railroad Administration.

(2) As such executive accounting officer of Southern Railway Company, he formulated and prescribed the accounting methods of the said Railway Company and directed and supervised its accounts in accordance with such methods as were formulated and prescribed by him.

108 (3) Briefly stated, the methods prescribed by him for apportioning results of operations to such individual States were as follows:

(*a*) Revenues:

One hundred per cent of freight and passenger revenues accruing on traffic having both origin and destination within a State (known as intrastate traffic) and one hundred per cent of all miscellaneous revenues earned within a State, such as switching, demurrage, car service, storage and other similar items, are allocated to the State in which they are earned.

Revenues from freight and passenger traffic, having either origin or destination within one State (known as interstate traffic), and revenues from freight and passenger traffic which have origin or destination within one State, but which pass in whole or in part through such State, also known as interstate traffic, but more specifically classified herein as trans-state traffic, are allocated to the States within which such traffic moves on basis of miles traveled by such traffic.

No deductions, adjustments or allowances are made in such allocations for assembling, handling, loading, unloading and other terminal costs incident to the handling of trans-state traffic.

(*b*) One hundred per cent of the maintenance and trans-
109 portation costs incurred within the borders of an individual State are allocated to such State. No additions to or adjustments of such costs so allocated to an individual State are made to equalize or adjust assembling, handling, loading, unloading, and other terminal costs incurred in receiving and discharging trans-state traffic.

(4) Deponent states that he realized some years ago and now realizes that the results or the net revenue produced for the State of North Carolina under the accounting formulæ for allocating revenues and operating costs to States above described, were and now are erroneous and inequitable; that revenues allocated to each State, as revenues are allocated by Southern Railway Company's system of accounting, should be charged with appropriate proportions of all assembling, terminal and handling costs incurred without the State on trans-state traffic moved within a State.

(5) Deponent further states that realizing the existence of such errors and inequalities in the apportionment of revenues and operating costs to individual States, and also realizing that to correct such inequalities it would be necessary for the Railroad Commissions of each State throughout the country to mutually agree upon a uniform method of apportionment, he brought the matter to the attention of the several State Commissions through a representative of the Interstate Commerce Commission, with a view to the pro-
110 mulgation and adoption of a uniform plan of apportionment which would correct the inequalities then existing and which now exist in such apportionments.

Such inequalities and errors were recognized by representatives of both the Federal and State Commissions. The subject was thoroughly discussed and digested at various meetings of committees representing the three interests, i. e., the railroads, the State Commissions and the Federal Commission, the result of all of which was that no relief was given and no change has been made in the method of keeping such accounts.

(6) Deponent further states that in an analysis of operations of Southern Railway Company within the State of North Carolina, it was found by him that of the total traffic handled within the State during a given period, forty-three per cent of it originated without said State and had destinations beyond said State, and that while revenues on such trans-state traffic were apportioned to the State of North Carolina on a mileage basis without deductions or adjustments for terminal costs, such revenues so allocated to said State were not charged with any part of the costs incurred in other States in assembling, handling, loading or unloading such traffic, or for costs incurred in maintaining the facilities in and by which such traffic was handled; and that by reason of the application of the accounting methods employed in the allocation of operating results to
111 States, the operating costs allotted and reported to the State of North Carolina are understated to the extent of said State's just and proper proportion of such terminal costs on at least forty-

three per cent of the traffic transported within such State by Southern Railway Company.

(7) Deponent further states that it is not the practice of Southern Railway Company to make interdivisional charges for costs incurred by individual operating divisions in transporting company material for other operating divisions. The Southern Railway Company uses no fuel coal mined within the State of North Carolina. The coal consumed by it in said State is obtained in the Alabama, Tennessee and Virginia coal fields. No part of the costs to assemble it and to transport it to the North Carolina State Line is charged against the revenues allocated to the State of North Carolina, but such costs are allocated to the States in which the service is performed without corresponding revenues for such service. As a result the coal carrying lines show either high operating cost ratios or costs in excess of revenues earned. As illustrations:

The line Birmingham to Atlanta, over which large quantities of coal are transported for Company use in Georgia, South and North Carolina, shows an operating ratio of 103.67 per cent for the year 1920. The line St. Charles to Bulls Gap, Tenn., another coal carrying line, shows an operating ratio of 114.30 per cent for the same period. The line from the Tennessee fields into Knoxville
112 shows an operating ratio of 113.93 per cent for 1920. Each of these three lines transport coal for use by the Company in operating its trains within the State of North Carolina and no part of the assembling, maintenance or transportation costs incident to the movement of such coal from the mines up to the North Carolina border line is charged against the revenues allocated to said State. The three lines mentioned are economically managed and operated. If they had received revenue credits for services performed for the North Carolina lines and for lines in other States, for which they transported locomotive and other operating coal, their operating cost ratios would have been substantially less and the costs thus lessened would properly be charged against the revenues allocated to the several States for which the service was performed. Therefore, the operating costs allocated to the State of North Carolina are understated to the extent of costs incident to the transportation of fuel coal used within that State from the mines to the State border.

(8) Deponent further states that those data reported in Southern Railway Company's quarterly reports to the Railroad Commission of the State of North Carolina, designated as "operating expenses" for another and additional reason do not truly or accurately reflect the operating costs chargeable to revenues allocated to said State, such other and additional reason being:
113 The operating costs allocated to the State of North Carolina and reported by Southern Railway Company include nothing for hire of equipment or joint facility rents, and to the extent of such accruals within said State, the operating results reflected by the said reports are either overstated or understated, as the case may be. It has been held by the Congress in the Transportation Act that credits or debits arising from such sources should be reckoned with in determining net operating income.

(9) Deponent further states that, based on his intimate knowledge of the operations of Southern Railway Company, as a whole and in the several States in which the Company transports traffic, the costs to earn a dollar of revenue within the State of North Carolina, if such revenues were charged with all proper costs incurred by the Company, would not be less than the costs to earn a dollar on the entire railway.

(10) Deponent further states that the five hundred and thirty-six million, to which defendants refer and of which he took a gross earnings proportion to arrive at a value in North Carolina of $111,308,323.00, includes investment in road and equipment improvements on leased railway property, materials and supplies, and Government allocated equipment. It is proper to first deduct from the total the materials and supplies, because the materials and supplies which were on hand at the time the statements were rendered
114 in July, 1920, were not correct as of May 1, 1921, and if it is proper to include materials and supplies, the amount thereof on hand May 1, 1921, was very much less than in July, 1920. Furthermore, there was no allocation by the Railway Company of the total of its investment account to North Carolina or any other State. In addition to this, while the amount found by the Interstate Commerce Commission to be the value for rate making purposes of all the carriers in what was known as the Southern Group was 91.1 per cent of the total claimed by the Group, affiant avers, on information and belief, and that it is not known to defendants how the 91.1 per cent was arrived at, and it may be that the Commission did not allow 91.1 per cent of the Southern's investment account and allowed more than 91.1 per cent of some other road's investment account in the Southern Group. In other words, the 91.1 per cent was a general average for the Southern Region and did not apply to any particular carrier in so far as the affiant is advised and believes. Affiant states that if it be considered proper to take the book investment, and illustration of the facts as applied to one line in the State of North Carolina will show the fallacy of so doing. The investment account of the North Carolina Railroad, as reported to the Interstate Commerce Commission was $4,975,628.00, whereas it is well known that said sum does not represent by half, the true value of said property.

(11) Deponent further states that it is a fact that the Commission, in its report on the values under Section 15(a) of the Inter-
115 state Act, used the language set forth in the answer at the top of page 16, but the deduction therefrom, "The plaintiff contended that the actual value of property in North Carolina was in excess of one hundred and eleven million," is that of defendants and is not a fact. Furthermore, since the hearing in the case referred to, Ex Parte 74, was had, the Southern Railway has received from the Interstate Commerce Commission, a partial report on its valuation under Section 19(a) of the Interstate Act, and it is affiant's understanding that if such investigation under the valuation section of the Interstate Act had been complete, it would have been

availed of by the Interstate Commission in making its finding on the valuation under Section 15(*a*), and inasmuch as the tentative value as promulgated by the Interstate Commission of affiant's road in the State of North Carolina is now as near completed as is set forth in complainant's bill on page 25, it does not seem proper to affiant, from an accounting standpoint, to use the general finding of the Commission for all roads in the Southern Group, rendered July 29, 1920.

(12) Deponent further states that the test period covered the three years ended June 30, 1917. The year ended June 30, 1915, was below normal. The year ended June 30, 1916, was normal. The year ended June 30, 1917, was above normal, and the average for the three years produced a normal return.

116 (13) Deponent further states that he has had prepared under his supervision for the Interstate Commerce Commission, full statements and diagrams disclosing the results of the traffic conditions of the Southern Railway for the years 1920 and 1921, in connection with the advances heretofore allowed by the Interstate Commerce Commission in freight rates of 25 per cent and passenger rates of 20 per cent. The facts disclosed by affiant's investigation are that the actual traffic transported produced an increase in freight rates of only 20.53 per cent and that that amounted to an increase in gross revenue of only 1.99 per cent due to the falling off in the tonnage and due to the falling off in the higher classes of freight which paid the greater amount of revenue. For instance, the first group, which covered the farm products, fell off 28.67 per cent and the second group, which included tobacco, fell off 25.26 per cent, whereas the third and fourth groups fell off only 9.98 per cent and 16.05 per cent respectively, as compared with the average decline of 18.33 per cent, whereas the decline in the groups covering the major portion of farm products was 28.67 per cent.

Affiant is, therefore, able to state as a fact that the Southern Railway Company suffered very heavily from the decline in its tonnage and that the increase in freight rates did not offset the decline and did not approximately offset the increase in what might be considered normal expenses.

(Signed) A. H. PLANT.

117 Subscribed and sworn to before me this 19th day of December, 1921.

[SEAL.] (Signed) HARRY K. PIMPER,
Notary Public.

118 *Affidavit of J. B. Duke in Support of Plaintiff's Application for Interlocutory Injunction.*

Filed Dec. 24, 1921.

DISTRICT OF COLUMBIA,
City of Washington:

J. B. Duke, being first duly sworn, says:

That he has been connected with the Accounting Department of the Southern Railway Company since March, 1900, and is at this time the General Auditor of the Company, in charge of its books and accounts, which are under his immediate supervision and jurisdiction.

That the main lines of Southern Railway Company in the State of North Carolina constitute funnels through which pass a large volume of traffic originating and terminating without the State. The revenue allocated to North Carolina on this traffic is the mileage proportion of the revenue accruing to Southern Railway Company arrived at on basis of miles hauled in North Carolina compared to the total miles hauled by Southern Railway Company.

That in the allocation of expenses to the State there is charged to North Carolina as the cost for hauling this traffic only
119 the road haulage costs incurred within the State.

That this method does not charge to North Carolina the total expenses which should be charged against the revenue allocated on a mileage basis to the State, and, as a consequence, the net income in North Carolina has been overstated.

That Southern Railway Company is required by North Carolina to report the results of operation within the State and endeavored to keep its accounts and records so as to comply with this requirement. It has been recognized, however, that there are great difficulties involved in keeping the accounts in a manner that would reflect with accuracy the revenues and expenses or net income in any individual State.

That these difficulties are generally recognized and several years ago efforts were made to devise methods by which there could be equitably apportioned to each State a proper part of assembling, terminal or haulage costs incident to interstate and trans-state traffic. The effort to do this was spread over a period of years and a careful study of the subject was made co-operatively by representatives of the various State Commissions and representatives of the railways through a committee appointed for that purpose. The conclusion reached by these joint representatives was:

120 "Whereas, The Joint Committee composed of the Standing Committee on Uniform Railway Statistics of the National Association of State Railroad Commissioners and a Sub-committee of the Committee on Corporate, Fiscal and General Accounts of the Association of American Railway Accounting Officers, have on several occasions in joint conference discussed the formulation of

rules for the assignment of expenses, and revenues by State lines, and

"Whereas, As a result of these discussions, the Joint Committee is unanimously of opinion, in view of the great variety of practices on the part of carriers and of local conditions, it is not possible at this time to arrive at a satisfactory set of rules for the purpose named:

"Be It Resolved, By the Joint Committee, that it is not feasible at this time to attempt the formulation of such rules and that each association for whom the respective committees stand, be requested to report this conclusion, accompanying the respective reports with such explanatory statements as will make clear the basis of the conclusion reached but at the same time expressing their willingness to take up the question at some future time if so requested by their respective associations."

It will be seen from the above that no feasible plan for surmounting the difficulties could be devised.

121 That Southern Railway Company, realizing that the reports do not reflect the actual results of operation by States situated as was North Carolina, has been confronted with the necessity of making the reports under State requirements and has made the reports upon the best basis that could be devised without exceedingly heavy accounting cost, and always realizing that the figures given to North Carolina did not correctly represent the net income for a State situated as is North Carolina, and it was on this account that the Tax Commissioner of Southern Railway Company was advised to make it clear to the tax authorities of North Carolina that the net income so stated was not the true net income for North Carolina, and affiant is advised and hence states that Southern Railway's tax officer did make this clear to the Commissioner of Revenue of North Carolina.

That in a test made by Southern Railway Company several years ago it was determined that of the volume of freight traffic handled in the State of North Carolina 43 per cent represented traffic having both origin and destination without the State, and if there has been any change it is believed that at this time the percentage would be greater. No test has been made as to the volume of passenger traffic passing through the State, but it must be admitted that there is a large volume of such traffic.

122 That operating expenses reported to the State of North Carolina do not include any of the initial or destination terminal costs on the above referred to traffic and as the State has been credited with a mileage prorate of revenue accruing on the traffic, the expenses are obviously understated with a consequent overstatement of the net income within that State.

That the Revenue Commissioner, affiant is advised, used the returns for the five-year period 1915-19 and found the annual average net income to be $6,117,625.00. This makes a ratio of 71.20, which means that it cost 71.20c. to earn a dollar. The System ratio for that period was 77.50, and if that ratio had been applied to the gross revenue which produced the net figure of $6,117,625.00, the result would have been an annual average net income of $4,779,641.00 instead of $6,117,625.00, and if the $4,779,641.00 be capi-

talized at 6 per cent, the capitalization would have been $79,660,-683.00.

That if the Commissioner of Revenue had taken the five years 1916-20, the annual average net income reported to North Carolina would have been $6,385,392.00, and that gives an operating ratio in North Carolina under that erroneous system of arriving at the net, of 74.22. If the gross revenue for the period 1916-20, which produced the above net of $6,385,392.00, had had applied to it the System ratio for the said five-year period of 81.48, the aver-
123 age net for that five years would have been $4,586,793.00, which figure, capitalized at 6 per cent, would give $76,-446,651.00.

That the actual results of operation for the six months ended June 30, 1921, disclose that the Southern Railway Company for said six months lacked, after paying operating expenses, taxes, hire of equipment, and rents for joint facilities, the sum of appproximately $4,500,000.00 of earning sufficient money to pay interest on its funded debt and other fixed charges, exclusive of any dividend. It is true that the succeeding four months, namely, to November 1, 1921, have shown an increase and that the sum which the earnings of the Company up to November 1, 1921, lacked for that ten months of being sufficient to pay the interest on its funded indebtedness and other fixed charges, exclusive of dividends, was approximately $1,-600,000.00 It is stated, however, that if the earnings are to be taken as a criterion of the present value of the property, since the property was to be valued as of May 1, 1921, the period subsequent to June 30, 1921, should not be included, but the earnings during that period would be evidence of value when it comes to consider the value on May 1, 1922.

That the station and yard expenses on the Southern Railway are kept separately from the other expenses, and the records show that for the year ended December 31, 1920, the average cost per ton of station and yard expenses for the Southern Railway as a
124 whole was 42.05c. as compared to a cost for similar classes of expense per ton in North Carolina of 25.87c. per ton. This shows that the terminal costs in the State of North Carolina are not as great as those in other States. This is due to the fact that the larger terminals are in other States and heavier terminal expenses are charged to other States, in accordance with the method of keeping the accounts heretofore explained, and is also due to the fact that North Carolina is so located that it acts as a funnel for the Southern Railway's traffic, viz: traffic moving north and south; traffic from the southeast going northeast; traffic from the southwest going to the northeast; and traffic from the northwest and west which moves east through the State of North Carolina. This may be visualized by reference to the map hereto attached, marked Exhibit "A." On all of this traffic the State of North Carolina receives its full mileage prorate of the revenue, but is not charged with any of the terminal expense, so that when you figure up the terminal expense in North Carolina on a per ton basis, it is shown, as above stated, that it costs 25.87c. per ton as against 42.05c. per ton for the Company as a whole.

That if the operating expenses apportioned to the State of North Carolina included an average System charge for station and yard expenses per ton of freight handled in that State as a charge against the mileage proportion of revenue apportioned to the State,
125 the operating expenses for the year ended December 31, 1920, would have been increased and the net operating income would have been decreased by $2,456,432.07.

That the results of operation for the year ended December 31, 1920, on the line Asheville to Murphy, N. C., were:

Railway Operating Revenue	$1,066,883.75
Railway Operating Expenses	1,382,163.37
Ratio Operating Expenses to Op. Rev	129.55

that is, it took $1.29 to earn $1.00, whereas the same figures for the line Asheville to Salisbury, N. C., were:

Railway Operating Revenue	$5,749,165.96
Railway Operating Expenses	4,448,897.48
Ratio Operating Expenses to Op. Rev	77.55

that is, the purely operating expenses consumed 77.55c. of every dollar.

The above figures prove that the mountain lines cost more to operate and do not pay as great a return as do the low grade lines; and further prove that the volume of the interstate tonnage coming from east and from the west and southwest and passing over the line Asheville to Salisbury and on which no terminal cost is allocated to North Carolina have cut down the operating cost below what
126 it properly should be if a proportion of the terminal charge was placed against that line.

That while it is true that the aggregate of the freight which originates at and is shipped from Winston-Salem is at times greater than that shipped from any other point on the line of Southern Railway, it is also true that there is included in such shipments, not only the freight which originates at the City of Winston-Salem, but also the freight which is forwarded from Winston-Salem, received by Southern from its connections.

If you deal only with the tonnage of freight which originates at Winston-Salem and is forwarded over Southern Railway lines, Winston-Salem is not, by any means, the largest freight shipping point on the line of Southern Railway.

For instance, for the month of September, 1921, there originated at Richmond, Va., and were forwarded over Southern lines, 19,587 tons of freight, whereas the tonnage originated at Winston-Salem and forwarded over Southern lines was only 11,380 tons, the tonnage shipped from Richmond proper being 72 per cent greater than that originated at and shipped from Winston-Salem for that month.

It is true that if there be added to the freight which originates at Winston-Salem the freight which is delivered to Southern
127 Railway at Winston-Salem by connections and by it forwarded, which for the month of September, 1921, was 35,314

tons, or more than three times greater than that which originated at Winston-Salem proper, Winston-Salem tonnage would probably be greater than that shipped from any other individual station.

The relatively large proportion of freight forwarded from Winston-Salem over Southern Railway Lines coming from connections but which does not originate at Winston-Salem consists largely of interstate coal handled in carload lots and in large volume and in cuts of cars, requiring relatively little terminal handling, which makes the terminal expense at Winston-Salem relatively very small.

The terminal expenses at Winston-Salem are not heavy due to the fact that a large part of the freight originating at Winston-Salem is manufactured tobacco and this traffic is, generally speaking, loaded by the shipper and handled at a minimum expense to the Railway Company.

It is a fact that the total freight revenue, including advanced charges, if any, is very heavy at Winston-Salem, but, as stated, it consists largely of freight on tobacco, which moves for great distances and many other lines participate in the rate. It is a further fact
128 that the transportation cost under the item of loss and damage freight claims are heavier on manufactured tobacco than on any other article of freight. The freight received at Winston-Salem is not by any means the largest of any station on the Southern Railway. Charleston, S. C., Knoxville, Tenn., Atlanta, Ga., Birmingham, Ala., and many other stations receive much more freight.

That the system followed by Southern Railway Company in the apportionment of revenue among States has not heretofore been changed because it has not in any one State heretofore worked to the disadvantage of the carrier so as to affect it financially and because a change in the method of approximating revenues and expenses among the States with a view of making these apportionments on a more accurate basis would have proved to be very expensive.

That as an accounting officer of Southern Railway Company, having had immediate jurisdiction over and to do with its accounts during the past twenty-one years, he can see no reason from an operating standpoint why the cost to earn a dollar of revenue within the State of North Carolina should be less than the average cost to earn a dollar of revenue on the entire System.

That it is manifestly apparent that the low operating ratio
129 produced within the State of North Carolina, as reflected by its reports to the State and through its method of accounting, is due to the fact that the expenses assigned to the State include nothing whatever for assembly and terminal costs on trans-state traffic which has both origin and destination without the borders of the State.

That the Southern Railway Company owns the capital stock of the Atlantic & Yadkin Railway Company. The Atlantic & Yadkin Railway Company is separately operated, has a separate board of directors, consisting of six members, three of whom are not in any way connected with the Southern Railway Company, namely, C. H. Ireland of Greensboro, N. C., A. E. Smith,

of Mt. Airy, N. C., and J. C. Watkins, of Greensboro, N. C. Its books and accounts are kept separately and its receipts and expenditures are kept distinct and separate from those of the Southern Railway Company. It makes a separate report to the Interstate Commerce Commission and is from an accounting, treasury, corporate and operating standpoint entirely distinct from Southern Railway Company.

(Signed) J. B. DUKE.

Subscribed and sworn to before me this 19th day of December, 1921.

[SEAL.] (Signed) HARRY K. PIMPER,
Notary Public.

130 *Affidavit of C. E. A. McCarthy in Support of Plaintiff's Application for Interlocutory Injunction.*

Filed Dec. 24, 1921.

STATE OF NEW YORK,
City and County of New York:

C. E. A. McCarthy, being first duly sworn, says:

That he resides in the City of New York and has been connected with the Secretary's office of Southern Railway Company for nearly twenty-four years and has been Secretary for the past year; that by virtue of his office he is familiar with the market price of the bonds and other funded indebtedness of Southern Railway Company and of the stock of Southern Railway Company; that the stock books and bond registry books are kept in his office or under his jurisdiction, and the transfers of certificates of stock and the registration of bonds are made in his office, or under his jurisdiction; that the list of bonds, other funded debt, and stocks of Southern Railway Company shown on the statements hereto attached* and made part of this affidavit is true and correct, and that the prices shown as of the dates given are the prices taken by him from the publication of

*NOTE.—The statements attached to Mr. McCarthy's affidavit are not printed, because too voluminous and the expense of printing is too great. The original statements are filed with the original affidavit in this cause in Court. The statements show for the five year period 1917 to 1921, inclusive, the name of the stock or bond or other obligation, the total par value thereof, the average market price for the year, and the total market value for the year, with the closing market price bid and asked as of April 30th, each year. The summary referred to in the above affidavit is the summary of the total market value for each of the five years as follows:

1917	$329,646,630.76
1918	318,819,008.01
1919	308,668,562.64
1920	295,291,397.62
1921	287,049,221.37
Total	$1,539,574,820.40
Average	$307,914,964.

such information made by the Commercial and Financial Chronicle, a recognized commercial and financial journal, and that the
131 recapitulation shown is true and correct as based upon the information set forth.

The average of the total market value for the five year period 1917 to 1921, inclusive, is, as based upon and shown by the attached statements, the sum of $307,914,964.

(Signed) C. E. A. McCARTHY.

Subscribed and sworn to before me this 16th day of December, 1921.

[SEAL.] (Signed) JENNIE C. DALE,
Notary Public.

132 *Affidavit of T. H. Gatlin in Support of Plaintiff's Application for Interloctutory Injunction.*

Filed Dec. 24, 1921.

T. H. Gatlin, being first duly sworn, says:

That he has been in the engineering service of railway companies for the past thirty years and is at the present time Chief Engineer of Construction of Southern Railway Company and its affiliated lines.

That he has read the answer of A. D. Watts, et al., in the suit of Southern Railway Company vs. A. D. Watts, et al., and states the following facts in answer to and bearing upon certain allegations in said answer, namely:

That the cost per mile of the mileage between points shown in mountainous sections of North Carolina for 444 miles averages approximately $51,000.00 per mile:

Val. sec.	From—	To—	Miles main track.	Value I. C. C. new.	Aver. cost per mile new.	Max. grade.	Max. curv.
53	Murphy Jct NC....	Murphy NC.....	122.3	$4,430,398	$36,000	{N. 3.9% {S. 4.1%	17 deg.
48	Biltmore NC.....	NC-SC State Line.....	42.5	2,261,577	53,000	{N. 4.7% {S. 2.3%	11 deg.
49	Hendersonville.....	Lake Toxaway.....	42.0	901,310	22,000	{N. 2.2% {S. 3.0%	11 deg.
43	SC-NC State Line...	Marion NC.....	64.2	1,766,494	28,000	{N. 1.8% {S. 1.6%	12 deg.
33	Salisbury.....	NC-Tenn State Line....	173.3	13,348,391	77,000	{E. 1.8% {W. 3.2%	12 deg.
	Total		444.3	22,708,170	51,000		

133 That the cost figures shown in above statement were compiled by the Bureau of Valuation in its tentative report, except right of way, which is the value compiled by the Land Department of the Southern Railway. The maximum grades and curvature are as reported by the Southern Railway Company to the Interstate Commerce Commission, Bureau of Valuation.

That the C. C. & O. Railroad was constructed in 1907, an entirely new and modern railroad with a maximum grade of 1.4% compensated, and maximum curvature of 6 deg., which largely accounts for heavy construction cost per mile. Whereas, the Southern Railway Company lines in this section of North Carolina have grades as high as 4.7% and curvature as high as 17 deg., with a heavy operating cost in proportion to curvature and grades. This largely explains the small cost of construction per mile as compared with the cost per mile of construction of the C. C. & O. Railroad.

That the so-called mountain lines of the Southern above referred to have a very much heavier operating cost per year than does the C. C. & O., due to the grade and character of construction, as above set forth. The cost of operation of the 444 miles for a year exceeds the cost of operation of the same mileage in the level portions of the State by $319,906.65.

134 That the actual cost of all work performed in connection with the construction of the double track of 625 miles between Washington and Atlanta was $52,134,000.00. This total cost included the rearrangement of the first main track and a large amount of entirely new double track in a new location, which was necessary in the elimination of excessive grades and curves which existed in the original main track. In a great many cases where the location of new double track is located on original centers, summits were lowered and low places were raised. This involved a large additional expense in operation and construction during the raising and lowering of the first main track. In the construction of the new second main track through the State of North Carolina fully thirty per cent of the first main track was changed to a new location and entirely reconstructed. So that it is not correct to say that the second track cost on an average per mile of $82,884.00. You would have to take into consideration very many other features to arrive at the cost per mile of the second track. As explained, in many instances the total includes the reconstruction of the two tracks. In addition to this, the heavier and more expensive part of the double track construction which is included in the total set forth in the answer was outside of the State of North Carolina.

135 That the terminal facilities in North Carolina do not in the aggregate compare with the terminal facilities in certain other States. It is not a fact that Spencer is the largest terminal yard and repair shop of this company. The following comparative figures show the relative cost of constructing the Spencer yard and terminal with one of the larger terminals located on its line at Inman, Ga. The gross cost of constructing these terminals are as follows:

Inman Yard and Terminal..... $789,847.19
Spencer Yard and Terminal..... 367,455.99

These terminals were reconstructed and enlarged at practically the same time and are located on the same line. The Inman Terminal is nearly twice the size of the Spencer Terminal, with operating expenses in proportion.

(Signed) T. H. GATLIN.

Subscribed and sworn to before me this 22nd day of December, 1921.

(Signed) HARRY K. PIMPER,
Notary Public.

136 *Affidavit of R. E. Johnson and Others in Support of Plaintiff's Application for Interlocutory Injunction.*

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Gaston:

R. E. Johnson, being duly sworn, says:

That he is a citizen of Gaston County, North Carolina, and has been such for a number of years; that he is engaged in the business of selling agent and merchandise distributor and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

137 Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) R. E. JOHNSON.

Subscribed and sworn to before me, this the 5th day of October, 1921.

(Signed) EDNA J. AHMAND,
Notary Public, Gaston County, N. C.

My commission expires September 3, 1922.

Affidavit of W. C. Idol.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

W. C. Idol, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of banking, being Cashier of the Wachovia Bank & Trust Company, at High Point, and is acquainted with the rate of interest generally prevailing in the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

138 Affiant further says that, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) W. C. IDOL.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

My commission expires the 23rd day of April, 1923.

Affidavit of V. A. J. Idol.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

V. A. J. Idol, being duly sworn, says:

139 That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of banking, being Cashier of the Commercial National Bank, at High Point, and is acquainted with the rate of interest generally prevailing in the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest

generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) V. A. J. IDOL.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

My commission expires the 23rd day of April, 1923.

140 *Affidavit of Frank Wineskie.*

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

Frank Wineskie, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of manufacturing of mirrors, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) FRANK WINESKIE.

141 Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of Guy E. Wells.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

Guy E. Wells, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of automobiles, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

142 Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) GUY E. WELLS.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of J. E. Kirkman.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

J. E. Kirkman, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of manufacturing of furniture and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

143 Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was

in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) J. E. KIRKMAN.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of Harry Raymond.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

Harry Raymond, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North
144 Carolina, and has been such for a number of years; that he is engaged in the business of manufacture of veneers, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) HARRY RAYMOND.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

145 *Affidavit of W. H. Slave.*

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

W. H. Slave, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in

the business of hosiery manufacturer, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) W. H. SLAVE.

146 Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of R. T. Amos.

Filed Dec. 24, 1921.

STATE OF NORTH CAROLINA,
County of Guilford:

R. T. Amos, being duly sworn, says:

That he is a citizen of High Point, Guilford County, North Carolina, and has been such for a number of years; that he is engaged in the business of manufacture of hosiery, and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that in his section of the State of North Carolina and, so far as he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising, and other business was in
147 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) R. T. AMOS.

Subscribed and sworn to before me this 30th day of September, 1921.

(Signed) AURA K. GRIMES,
Notary Public, Guilford County, North Carolina.

Affidavit of Wallace B. Davis.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Buncombe County:

Wallace B. Davis, being duly sworn, deposes and says:
That he is President of the Central Bank and Trust Company of Asheville, North Carolina; and has been engaged in the banking business at Asheville for more than fifteen years; that the usual and ordinary rate of interest charged on loans in this community during 1920 and the spring of 1921 was more than six per cent and
148 that when loans were made by banks at six per — it was usually with the understanding that a certain per cent of the loan be kept on deposit. Some loans were made at six per cent straight, but the general rule among persons having money to loan is that the loans are made at from seven to eight per cent, and sometimes even at a higher rate, and this has been so for several years.

(Signed) W. B. DAVIS.

Sworn to and subscribed before me this 23rd day of September, 1921.

(Signed) THOMAS S. ROLLINS,
Notary Public, Buncombe County, North Carolina.

Affidavit of S. M. Hanes.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Buncombe County:

S. M. Hanes, being duly sworn, deposes and says:
That he is Secretary of the Bankers Trust and Title Insurance Company, of Asheville, North Carolina, and that among other things his company is engaged in buying and selling real estate
149 notes. That the usual and ordinary rate of interest charged on loans in this community during 1920 and the spring of 1921, was more than six per cent; that the usual and customary rate of interest charged on loans in this community during said time was from seven to eight per cent, and some loans were even made at a higher rate of interest.

(Signed) S. M. HANES.

Sworn to and subscribed before me this 23rd day of September, 1921.

(Signed) THOMAS S. ROLLINS,
Notary Public, Buncombe County, North Carolina.

Affidavit of R. H. Edwards.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Wayne County:

R. H. Edwards, being duly sworn, says that he is President of the Farmers Loan & Trust Company of the City of Goldsboro; that he is familiar with the current rate of interest charged during 1920 and the spring of 1921 in the County of Wayne, State of North
150 Carolina; that in the opinion of affiant, a majority of the loans made during that period was 8 per cent.

(Signed) R. H. EDWARDS.

Sworn to and subscribed before me this the 20th day of September, 1921.

(Signed) RUTH MIDDLETON,
Notary Public.

My commission expires Aug. 27, 1922.

Affidavit of Geo. D. Bizzell.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Wayne County:

Geo. D. Bizzell, being duly sworn, says that he is Chairman of the County Board of Commissioners of Wayne County; that he is familiar with the current rate of interest charged during 1920 and the spring of 1921 in the County of Wayne, State of North Carolina; that in opinion of affiant, a majority of the loans made during that period was 8 per cent; that during that period the County of Wayne borrowed money in various amounts and paid as much as 8 per cent interest.

(Signed) GEO. D. BIZZELL.

151 Sworn to and subscribed before me this the 20th day of September, 1921.

(Signed) RUTH MIDDLETON,
Notary Public.

My commission expires Aug. 27, 1922.

Affidavit of Fred R. Mintz.

Filed Dec. 24, 1921.

NORTH CAROLINA,
Wayne County:

Fred R. Mintz, being duly sworn, says that he is a member of the co-partnership, trading under the firm name of Williamson Real State of North Carolina; that he has represented the County of Estate Company of the Town of Mount Olive, County of Wayne,

Wayne in the General Assembly for two sessions and was for a number of years owner and editor of the Mount Olive Tribune, a newspaper published in Wayne County; that he is familiar with the current rate of interest charged during 1920 and the spring of 1921 in the County of Wayne, State of North Carolina; that in the opinion of affiant, a majority of the loans made during that period was 8 per cent and over.

(Signed) FRED R. MINTZ.

Sworn to and subscribed before me this the 20th day of September, 1921.

(Signed) RUTH MIDDLETON,
Notary Public.

My commission expires Aug. 27, 1922.

152 *Affidavit of Members of Tax Commission.*

Filed January 23, 1922.

In the District Court of the United States for the Western District of North Carolina.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

And the other suits against the same defendants brought by Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Norfolk & Southern Railroad Company, Atlantic & Yadkin Railway Company.

Affidavit by the Members of the Former Tax Commission of No. Ca.

STATE OF NORTH CAROLINA,
Wake County:

W. T. Lee, George P. Pell and A. J. Maxwell make this statement under oath.

That in the years 1919 and 1920 W. T. Lee, George P. Pell and A. J. Maxwell were members of and constituted the State Tax Commission, W. T. Lee being Chairman of the State Tax Commission, and had and exercised the duties and responsibilities conferred upon them by Chapter 92 of the Public Laws of 1919 and by Chapter 84 of the Public Laws of 1919, and as the State Tax Commission exercised the powers and duties of a Board of Appraisers of all properties, located within the State of North Carolina, of all railroad companies (excepting certain incidental properties of such companies assessed by local authorities) and also had and exercised supervision of the valuation of all real property of every kind and of the listing

and valuation of all personal property of every kind in all
153 counties of the State. In the supervision of the listing and valuation of such properties by local assessing officers, under the laws hereinbefore referred to, it was the purpose to have all lands listed and valued equally at the true value of such lands and assessing officers were required to ascertain the actual sales value of lands, where there had been a recent sale, and to use the information thus obtained, as well as all other information obtainable, in finding the actual true value of such lands on the first day of May, 1919, and in estimating the value of other similar lands, in cases where there had been no recent sales, and that as to industrial plants of all kinds and the tracks, structures, buildings and equipment of railroad companies—properties which had not been subject to unit sales as a whole and the value of which could not therefore be determined with relation to an actual sale of such properties—it was the purpose to require, and the State Tax Commission did in so far as it could reasonably do so, the owners of industrial plants and railroad companies, to furnish information on forms prepared by experienced persons employed by the State Tax Commission, complete detailed information, under authority of section thirty-one of Chapter 84 of the Public Laws of 1919, of the cost of reproduction of such industrial plants on the price level of May 1, 1919, and as to railroads the cost of reproduction of the properties of such companies new on May 1, 1919, including side tracks, doubled tracks, and all properties owned by such companies in this State, less reasonable depreciation for such of its properties as had depreciated in value, and also information as to capital stock, bonds and other indebtedness, earnings, and so on.

The Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk-Southern Railroad Company, in response to demands made upon them for specific and detailed information as to the cost of reproduction of the properties in this State of each of these companies, did file with the State Tax Commission certain sets of figures,
154 now on file with the Commissioner of Revenue, but did not pretend that such figures even approximated the cost of reproduction of the properties owned by these companies, or either of them, in this State, in the year 1919, but, on the other hand, insisted that it would not be possible for them to furnish this information at any reasonable cost or at any cost within a period of several years. The State Tax Commission, therefore, did not have the benefit of this specific detailed information with respect to the value of the particular properties in this State of these several railroad companies which it did have with respect to, and used in, the valuation of properties of industrial enterprises within the State, and of necessity had to form its valuation of the properties of these companies without having this information and by making the best use that it could of other information furnished by these companies and information furnished by these companies and information on file with and in the records of the North Carolina Corporation Commission.

One of the evidences of value submitted for consideration, by each of these companies was what is technically known as "investment accounts" of these companies, not within the State of North Carolina, but throughout the entire systems of Railroads owned by them in many states other than North Carolina; and it was insisted by them that the proportion of their total investment account which their main line mileage within the State of North Carolina bore to the total main line mileage of each of these several railway systems throughout the several states in which they operated would give a fair value of the property of such companies within the State of North Carolina, except that it was insisted that they had larger and more expensive terminal facilities outside the State of North Carolina than they had at any one point within the State of North Carolina, and that for this reason the straight mileage proportion of their investment account would be more than a fair proportion for this State.

155 The State Tax Commission was not able to agree with them that this method would fairly determine the value of their properties within the State of North Carolina, for that, first, their investment accounts represented investments made in the properties going back through a long period of years to their original organizations, and such investment having been in a large part made in years when the general price level of materials, commodities and labor was very much lower than the price level for materials, commodities and labor was on May first 1919; and for that, second, a straight mileage proportion of their lines did not, in our opinion, accurately or fairly represent the actual value of the properties of either the Southern Railway Company, the Atlantic Coast Line Railroad Company or the Seaboard Air Line Railway Company within the State of North Carolina, the lines of these companies within North Carolina having, in our opinion, a much greater value than an average based upon the mileage for their entire systems, in that they have a larger proportion of double track main line mileage in North Carolina than for their entire systems, and in that both the gross and net earnings of each of these railway lines within the State of North Carolina is much greater than the average gross and net earnings per mile for their entire systems. All of this was duly considered by the Commission in proportioning, dividing and determining the valuation of the property of the said railroads in North Carolina as provided by law.

For the year 1918, the last calendar year prior to the first day of May 1919, the excess net operating revenue per mile within the State of North Carolina of each of these railway companies in excess of the net operating revenue per mile for their entire systems, stated in percentages as shown by their reports on file with the Corporation Commission, was as follows:

156 Southern Railway Company 50.48;
Atlantic Coast Line Railroad Company 19.75;
Seaboard Air Line Railway Company 250.01.

A satisfactory estimate of value could not be made based upon the market value of the stocks and bonds of these companies on the first day of May 1919, for the reason that the limited market and the limited number of shares and bonds sold on the market did not furnish, in our judgment, a fair index of the actual value of these properties as a whole, and more particularly did not furnish an index of the actual value of the properties of these companies located within the State of North Carolina for the reasons hereinbefore stated; nor was it considered that the actual value of these properties could be fairly determined by their earnings, until there should be a fair return to normal conditions of operating costs, flow of traffic and stabilization of transportation rates.

For the reasons hereinbefore set out the valuation finally made or determined by the State Tax Commission of the properties of each of these railway companies within the State of North Carolina as of the first day of May 1919, was not made with the sole and exclusive relation to any one element or indicia of value, but after due and proper consideration of all of them and upon the best knowledge and information obtainable by the Commission.

The members of the Commission have for years been actively engaged in the matters of valuation for rate making and taxation purposes in North Carolina and are acquainted with property values of railroads in the State and in assessing the properties of the plaintiffs the Commission gave due consideration to all factors and methods prescribed by the law governing such valuations and the values of said properties as fixed and determined by the Commission as of the first day of May 1919, were, in the opinion of affiants, fair, just and reasonable.

As to the properties of the Southern Railway Company in the State of North Carolina, a valuation of $111,308.325 was
157 made, which was in fact the proportion of the investment account of the Southern Railway Company which the gross earnings of that company within the State of North Carolina bore to the total gross earnings of the Southern Railway Company for the entire system. Upon hearing and review of this valuation, after notice to the Southern Railway Company, it was reduced to $101,960.416, which was in fact the amount which the average net earnings of the Southern Railway Company within the State of North Carolina for the preceding five years, capitalized upon a basis or theory of six per cent, would have produced.

In general the same method was followed in fixing the valuation of the total properties in the State of the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railroad Company, and the Norfolk and Southern Railroad Company. In each case the basic consideration was the cost of reproduction value, less depreciation, which, in the absence of correct reports of such values by the railroads as they were required by law to furnish and which were duly called for by the Commission, was arrived at as accurately as possible by a consideration of the investment account. In each case a tentative cost of reproduction value was found in this way, which, except in the case of the Norfolk and Southern, was in excess of the

assessment as finally arrived at. In the case of the Norfolk and Southern this investment account, or cost of reproduction, value was the same as the final assessment and that railroad made no application to the Commission for rehearing on that assessment and took no exception thereto. In the case of the other railroads, a consideration of capitalization of net income and of the other factors which the Tax Commission was authorized by law to consider led to the reduction of this investment account, or cost of reproduction, value to the valuation fixed as the final assessment.

After the assessments of the properties of the plaintiffs had been arrived at by the Tax Commission pursuant to the Revalua-
158 tion Act (Public Laws of 1919, Chapter 84) the Commission as required by law, made report of its action and valuation to the General Assembly of North Carolina and thereupon, in the special session of 1920 the General Assembly, by Chap. 1, Public Laws, Extra Session 1920, specifically approved said valuations as correct and adopted them as and declared them to be the basis for taxation for the years 1920-1923 inclusive, except as such valuations should be thereafter changed according to law. And the affiants are informed and believe and so aver that the said valuations, so made by the Commission and reported to the General Assembly and approved and adopted by it, have remained and still are the basis for taxation of the said railroads in North Carolina except in so far as they have been modified or changed by the Commissioner of Revenue upon application made to him by the said railroads for review as provided by law.

As to the tentative values of the engineers of the Interstate Commerce Commission, referred to by the plaintiffs in these suits as being proper indices of the correct valuation of their total properties in North Carolina, the said tentative values were arrived at upon the basis of an inventory of the railroads' properties as of the date of June 30, 1914. The affiants state of their own knowledge that the said prices prevailing in 1914 as to material labor, and all costs of railroad construction, were abnormally low, that since that time such prices have greatly increased, and that in 1919 and in 1920 the said prices of labor, materials, and all things going into the construction of railroads were very much higher than those of 1914 upon which the said tentative figures of the Interstate Commerce Commission were based. In the opinion of the affiants the said tentative figures in no way furnish a proper index or test of the value of the properties of railroads in North Carolina in 1919 and 1920.

It was the purpose of the State Tax Commission in valuing
159 the property of transportation companies and other companies exercising the right of eminent domain, and in the supervision of the valuation of all other property by local assessing officers, to carry out and to have carried out what the State Tax Commission understood to be the general purpose of Chapter 84 of the Public Laws of 1919, that all property of every class should be fairly and equally valued at its actual value, and in evidence that no injustice was done to the Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Rail-

road Company and the Norfolk-Southern Railroad Company, there is attached hereto a copy of the report of the State Tax Commission to the Special Session of the General Assembly of 1920, showing, by comparison, the valuation of 1920 compared with the former valuation of each of the several different classes of properties within the State of North Carolina and showing that the increase in valuation of all railroad property within the State of North Carolina was 99 per cent; of real property 296 per cent; and of all property of all classes within the State 194 per cent.

W. T. LEE.
A. J. MAXWELL.
GEORGE P. PELL.

Sworn to and subscribed before me this January 21, 1922.
[SEAL.] W. H. PITTMAN,
Notary Public.

My commission expires July 29, 1922.

160 *Affidavit of A. J. Maxwell.*

Filed January 23, 1922.

ATLANTIC & YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

Affidavit of A. J. Maxwell.

A. J. Maxwell being first duly sworn, deposes and says:

He is a member of the North Carolina Corporation Commission and was a member of the former State Tax Commission of North Carolina. He has read the affidavit filed by Murray R. Hubbard in the above entitled suit. It was agreed between the affiant and Mr. Griffin and the said Murray Hubbard, Tax Commissioner of the Southern Railway System, that the said Murray Hubbard should take the total assessment of $101,960.413 and work out an apportionment of this total assessment among the different lines of the Southern Railway System in North Carolina, and Mr. Hubbard took the said assessment with him to Atlanta and worked out his own suggestion as to how it should be apportioned which suggestion he then transmitted to the State Tax Commission in the letter, a copy whereof is hereto attached and marked Exhibit A. As alleged in the answer of the defendants in the above entitled suit, the assessment of the properties of the Atlantic and Yadkin Railway Company made by the Tax Commission for the year 1920 was simply an adoption of this apportionment worked out and suggested by Mr. Hubbard. It was a suggested apportionment prepared and submitted

by him as Tax Commissioner and representative of the Southern Railway System. It was not determined by the affiant nor by Mr. Griffin, but was adopted by the Tax Commission.

A. J. MAXWELL.

Sworn to and subscribed before me this 20th day of January 1922.

[SEAL.] W. H. PITTMAN,
Notary Public.

My commission expires July 29th, 1922.

161 *Affidavit of Stedman Thompson.*

Filed January 23, 1922.

ATLANTIC & YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue.

Affidavit of Stedman Thompson.

Stedman Thompson being first duly sworn, deposes and says:

That he was Tax Clerk to the Tax Commission of North Carolina during the year 1920 and had been in its employment for several years prior thereto; that he has read the foregoing affidavit of A. J. Maxwell, and the matters stated by him therein are in accord with affiant's recollection of what occurred between Mr. Hubbard and the Tax Commission of North Carolina. He has read the affidavit filed by Mr. Hubbard.

O. S. THOMPSON.

Sworn to and subscribed before me this 20th day of January, 1922.

[SEAL.] W. H. PITTMAN,
Notary Public.

My Commission expires July 29, 1922.

162 Southern Railway Company.

Suggested Distribution of North Carolina Assessment.

AT&O	45.29 Mi. @	$89,251.99...	$4,042,222.63
CC&A	11.48 Mi. @	89,251.99...	1,024,612.85
WNC	185.50 Mi. @	89,251.99...	17,556,244.15
Do. Murphy Br.	122.52 Mi. @	89,251.99...	10,935,153.82
NWNC	100.15 Mi. @	89,251.99...	8,938,586.80
OXF & CLKV.	49.33 Mi. @	89,251.99...	4,402,800.67
OXF & H.	12.75 Mi. @	89,251.99...	1,137,962.87
Statv. & WN.	20.36 Mi. @	89,251.99...	1,817,170.52
Sel. Pinners Pt.	121.46 Mi. @	5,000.00...	607,300.00
Asbe. & Sptbg.	41.90 Mi. @	51,321.53...	2,150,372.11
ATL.&DAN.	22.00 Mi. @	20,735.97...	456,191.34
H&SC.	3.73 Mi. @	6,844.43...	25,529.73
NC MIDL	53.52 Mi. @	46,757.24...	2,502,447.49
SC& G Ext.	64.03 Mi. @	11,328.22...	725,345.93
State UNIV.	10.14 Mi. @	6,842.45...	69,386.60
TRANSYL RR.	41.67 Mi. @	13,599.24...	566,680.33
ATL & YAD.	161.08 Mi. @	25,482.43...	4,104,709.83
HPRA& SO.	26.78 Mi. @	25,720.87...	688,894.90
Yadkin RR	41.00 Mi. @	13,685.70...	561,113.70
A & CAL.	42.85 Mi. @	138,089.67...	5,917,142.36
Piedmont RR	42.70 Mi. @	138,089.67...	5,896,428.91
NC RR (Dbl. Trk)	93.20 Mi. @	138,089.67...	12,869,957.24
NC RR (Sgl. Trk)	130.00 Mi. @	115,108.91...	14,964,158.22
Total			$101,960,413.00

163 Southern Railroad Company.

Atlanta, Ga., July 21, 1920.

My Dear Mr. Griffin:

Enclosed herewith I am sending you statement showing distribution of the assessment that seems to me fairest under all the circumstances and perhaps best calculated to maintain a proper relation between the old and the new assessments.

The method pursued was to determine the increased percentage between the old and the new assessment and to apply that percentage of increase to the so-called "Owned Lines" (except Piedmont) and to all the other lines of less importance. This method left for distribution, over the double track lines and the Goldsboro line, a total of $39,647,688.73. As there are 308.75 mi. of road, this gave a value of $128,089.67 per mile It occurred to me that the double track line should have arbitrarily assigned to it a value of $10,000 above the average, and so I have figured the Air Line, North Carolina Railroad double track and the Piedmont at $138,089.67. This left for distribution between Greensboro and Goldsboro a value per mile of $115,108.91.

The only other arbitrary distribution involved in my method is the assignment of $5,000 per mile for rolling stock on the Selma-Pinners Point line and the per mile value fixed for High Point. This road is almost helpless and I assigned to it an arbitrary increase of $12,000 per mile instead of applying the increased percentage.

If you feel that any of these values are too high, I would suggest that it would be entirely proper to give a further arbitrary increase to the North Carolina Midland and to the Atlantic & Yadkin in order to absorbe any reduction on the double track line. You understand, of course, that I am not wedded to this distribution and am making same only as a suggestion and for the purpose of affording you all possible assistance.

Our train was delayed by wash-outs and was seven hours late reaching Atlanta, but I am taking up vigorously the localized property assessments and will use every effort to get them to you as soon as possible. I will advise by wire which will reach you before this letter.

Very sincerely,

(Signed) MURRAY R. HUBBARD,
Tax Commissioner.

163½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue. et al.

Further Affidavits Filed January 24, 1922, in Support of Plaintiff's Application for Interlocutory Injunction.

S. R. Prince,
Solicitor for Plaintiff.

L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
Of Counsel.

164 *Affidavit of Murray R. Hubbard.*

Filed Jany. 24, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Affidavit of Murray R. Hubbard.

STATE OF NORTH CAROLINA,
County of Guilford:

Before me, R. L. Blaylock, Clerk, U. S. District Court, Western District of North Carolina, personally appeared Murray R. Hubbard, who, being by me first duly sworn, on oath says:

(1) That the statement in the affidavit of the members of the former State Tax Commission to the effect that Southern Rail-
165 way Company submitted as an evidence of its true value its investment account and insisted that the proportion of its total investment account which its main line mileage within the State of North Carolina bore to the total main line mileage would give a fair value of the property of Southern Railway Company, except valuable terminals outside of the State, is incorrect; on the contrary, he insisted orally and in brief before the State Tax Commission and again before the Commissioner of Revenue that the Southern Railway Company's investment account was not a true index of the value of its property in North Carolina for tax purposes, and that he is the only person who submitted any facts or made any statement before the Tax Commission on behalf of Southern Railway Company.

(2) That he, as representing Southern Railway Company, furnished to the Commission, in response to its demand, a mass of detailed information as to the cost of reproduction of the properties of this Company in the State of North Carolina; said statements were correct and accurate as to the rolling stock and equipment. It was stated that as to the physical value of the property, other than rolling stock, that was as complete as the limited time given Southern Railway within which to prepare the same permitted. He is able to set out at this time that the values presented in said accounts approximated the values now given out by the Bureau of Valuation of the

Interstate Commerce Commission in their tentative report, as set forth in the bill filed in this case; that upon filing the same
166 the Tax Commission declined to consider it, stating that it was worthless for the purpose furnished.

(3) That he attaches hereto a classification of accounts prescribed by the Interstate Commerce Commission and followed by the Southern Railway Company in the keeping of its books and accounts. He has been furnished by the Accounting Department of Southern Railway Company with the actual results of operations for ten months and the estimated result for two months of the year 1921; that if the amount upon which the income tax in North Carolina is to be paid is arrived at in accordance with the income tax law, the amount of said tax to be paid by the Southern Railway Company for the year 1921 will approximate $78,000.00; that if the amount upon which said income tax for the State of North Carolina is based is the net income as the same is arrived at by following the Interstate Commerce Commission's classification of accounts, the tax to be paid for the year 1921 will approximate $8,000.

(4) That he has for and on behalf of Southern Railway Company paid during the year 1921 on the agreed assessed value of sixty million dollars to the Counties, cities, towns, and school districts within the State of North Carolina the total sum in taxes of $688,163.75. That the Southern Railway Company paid in the year 1920 in taxes to the said Counties, cities, towns, and separate school districts the total sum of $652,900.49. In other words, due
166½ to increase in tax rates, the Southern Railway Company has already paid on the sixty million dollar assessment the sum of $35,263.26 in excess of the amount paid in 1920 on the assessment of ninety-six million dollars; that the sum paid in 1921 will be increased by tax bills submitted by several Counties, cities, towns, and school districts, which have not been paid due to discrepancies therein, an added sum of $26,714.22; that the sum the Southern Railway Company will be required to pay if the ninety-six million dollar assessment remains will amount to $1,243,715.97. In other words, the actual increase in taxes paid and to be paid over the year 1920 on the ninety-six million dollar assessment, if that remains, will be the sum of $368,622.38.

(5) That the Atlantic and Yadkin Railway Company has paid to Counties and municipalities for the year 1921 on the agreed assessment of $1,975,806.00 the sum of $22,086.18, whereas in 1920 it paid on an assessment of $4,104,710.00 the sum of $26,423.95. The reason for the amount paid in 1921, notwithstanding the reduced assessment is the very marked increase in tax rates. If the assessment of $4,104,710.00 remains, the Atlantic and Yadkin Railway Company will pay total taxes of $50,091.50.

(Signed) MURRAY R. HUBBARD.

Subscribed and sworn to before me this 24th day of January, 1922.

(Signed) R. L. BLAYLOCK,

[SEAL.] *Clerk U. S. District Court.*

167 *Affidavit of A. H. Plant.*

Filed Jany. 24, 1922.

DISTRICT OF COLUMBIA,
City of Washington:

Before me, Harry K. Pimper, a Notary Public in and for said District, personally appeared A. H. Plant, who, being by me first duly sworn, on oath states:

That he is now and since March 1, 1920, has been Assistant to President of Southern Railway Company. From January 1, 1898, to June, 1918, he was the executive accounting officer of Southern Railway Company. From June, 1918, to February 29, 1920, he was Federal Auditor for the United States Railroad Administration and as such directed the accounting for operations of Southern Railway Company's properties, which, during that period, were operated by the United States Railroad Administration.

That as such executive accounting officer of Southern Railway Company, he formulated and prescribed the accounting methods of the said Railway Company and directed and supervised its accounts in accordance with such methods as were formulated and prescribed by him.

That under the accounting rules so prescribed, the actual revenues derived from intrastate freight and passenger traffic within a given State can be and are determined, and that revenues derived
168 from mail, express, and miscellaneous traffic can be apportioned with a fair degree of accuracy as between intrastate and interstate.

That on such bases of accurate accounting and fairly accurate apportionment, the intrastate revenues within the State of North Carolina for the year ended December 31, 1920, were:

Freight	$3,029,323.99
Passenger	4,228,000.88
Mail	597,289.01
Express	368,556.00
Miscellaneous	335,219.37
Total	$8,558,389.25

That it has been found impossible, except at a prohibitive cost, to apportion in like manner operating costs to the two classes of traffic; that is to say, operating costs and taxes to do intrastate business and operating costs and taxes to do interstate business. Therefore, no effort has been made in the past to currently set up or apportion operating expenses and taxes separately to the two classes of traffic. On the other hand, under the accounting rules prescribed by him, operating expenses are assigned to each State, including the State of North Carolina, as a whole.

That upon such assignment it was found for the year 1920 that the cost to operate in North Carolina per dollar of both intrastate and interstate revenues earned within the State was 78.08
169 cents. This 78.08 cents, however, does not fully represent the cost to earn a dollar of revenue within the State because the expenses incurred within the State are not charged with certain elements of costs incurred outside of the State which are properly chargeable to the revenues earned within that State.

That on various and sundry occasions it became necessary to determine as accurately as possible the operating costs to earn a dollar of intrastate revenue within the borders of certain States, among them the State of North Carolina. In order to do this, it became necessary to place on each train a special agent or auditor who made careful examination of each individual transaction handled by the trains and to set each transaction out and apply to it the cost incurred in handling such traffic. These examinations were made for the purpose of fixing as accurately as it could be fixed the relative costs per dollar of revenue on the two classes of traffic. The costs for this work exceeded something over $18,000.00 per month. The result of it was that it was found, not only in the State of North Carolina, but in other States, that the cost to earn a dollar of intrastate revenue within a given State was at least fifteen cents greater than the cost to earn a dollar of revenue on both intrastate and interstate traffic. So that, if the aggregate cost to earn a dollar of both intrastate and interstate traffic in North Carolina be 78.08 cents, the cost to earn a dollar of intrastate revenue would be not less than 93.08 cents.

170 That by applying this per dollar cost of 93.08 cents to the total intrastate revenues earned within the State, namely, $8,558,389.25, would produce as a minimum intrastate expense, including taxes, within the State of North Carolina for the year ended December 31, 1920, $7,966,148.71, leaving as net from intrastate traffic within that State for the year before mentioned $592,240.54.

(Signed) A. H. PLANT.

Subscribed and sworn to before me this 20th day of January, 1922.

(Signed) HARRY K. PIMPER,

[SEAL.] *Notary Public, District of Columbia.*

171 *Affidavit of L. H. Skinner.*

Filed Jany. 24, 1922.

DISTRICT OF COLUMBIA,
City of Washington:

Before me, Harry K. Pimper, a Notary Public in and for said District and City, personally appeared L. H. Skinner, who, being by me first duly sworn, on oath states:

That he is at this time Purchasing Agent of Southern Railway Company and has been connected with the Purchasing Department

of said Railway Company for sixteen years; that as such Purchasing Agent and through reports of other branches of the Purchasing Department of Southern Railway Company he has been and is familiar with the prices paid by Southern Railway Company for its materials and supplies.

That he attaches hereto a statement of the principal articles purchased by Southern Railway Company, which statement shows the unit prices of said articles May, 1920, compared with May, 1921; that a composite percentage of said articles and prices shows an average percentage of reduction May, 1921, under May, 1920, of 35 per cent.

That he has examined the Iron Age, a recognized publication, which set- forth monthly an annual composite price list of iron and steel articles; that the Iron Age for January 5, 1922, on page 60, shows a composite price for pig iron for May, 1920, to have been
$43.64 per ton, and the like figure for May, 1921, to have
172 been $22.78 per ton, or a percentage reduction of 47 per
cent plus; that the said Iron Age of January 5, 1922, sets out the composite prices of finished steel products, which includes quotations on steel bars, beams, tank plates, plain wire, open-hearth rails, black pipe, and black sheets, in cents per pound to have been for May, 1920, 3.804, and for May, 1921, 2.764, or a percentage of reduction May, 1921, under May 1920 of approximately 27½ per cent.

That the foregoing figures taken from the Iron Age bear out and corroborate the percentage of reduction given by him above on actual purchases made by Southern Railway Company.

(Signed) L. H. SKINNER.

Subscribed and sworn to before me this 19th day of January, 1922.

[SEAL.] (Signed) HARRY K. PIMPER,
Notary Public, District of Columbia.

173 *Memorandum of Prices for Materials Purchased by Southern Railway Company During May, 1920, and May, 1921.*

Description.	Unit of price.	Price May, 1920.	Price May, 1921.
Roadway Materials:			
Steel Rails (open hearth)	Gross Ton	$47.60	$47.60
Track Spikes	Per Cwt	4.15	3.33
Track Bolts	"	5.25	4.15
Rail Joints (Weber 85 lb.)	Each	2.83	2.74
Spring Frogs (No. 19, 85 lb.)	"	128.60	92.30
Rigid Frogs (No. 10, 85 lb.)	"	80.76	59.40
Switches, Complete (85 lb.)	"	106.25	75.75
Switch Points (85 lb.)	"	52.35	42.20
Switchties, Oak	Per M Ft. BM	45.00	19.00
Switchties, Pine	"	50.00	18.75
Crossing Plank, Oak	"	50.00	30.00
Crossties	Each	1.33	.77

Description.	Unit of price.	Price May, 1920.	Price May, 1921.
Bridge & Building Material:			
Bridge Ties & Guard Rail Pine, 8x10x11, 8x8x22	Per M Ft. BM	51.00	18.25 (E)
Stringers, Pine, 7x16x27	"	75.00	25.75 (E)
Sills & Posts, Pine—			
12x12x13' to 20'	"	57.56	21.25 (D)
12x12x22' to 30'	"	60.56	22.50 (D)
Bracing Pine, 3x10x24' to 30'	"	59.00	19.25 (E)
Creosoted Pine Lumber	"	89.50 (B)	49.25 (E)
Creosoted Pine Piles	Per Lin. Ft.	.56¾ (A)	.28
Shop Materials:			
Rolled Steel Coach Wheels (33").	Each	48.00	44.75
Locomotive Tires (rough bored).	Per Cwt.	6.85	5.85
Springs (Coil)	"	5.15	3.90
Springs (Elliptic)	"	7.15	5.90
Car Couplers (5x7 base)	Per Pair	47.55	39.05
Steel Bars	Per Cwt.	2.60	2.35
Steel Shapes	"	2.70	2.45
Steel Plates	"	2.80	2.45
Brass Castings	"	25.80	18.35
Journal Bearings	"	19.265	13.75
174 Malleable Castings (average)	"	12.00	8.80
Grey Iron Castings	"	3.90	4.25
Steel Castings (average)	"	7.00	8.25
Fuel Oil (in tank cars)	Gallon	.1057	.0393
Shop Oak	Per M Ft. BM	45.00	19.75
1" Boards, Pine	"	46.73	15.93 (D)
Car Sills 5½x9½x40' Pine	"	52.13	20.50 (C)
Car Siding	"	105.00	27.25
Car Lining & Roofing	"	68.75	21.50
Car Docking	"	48.00	17.90
Train Materials:			
Valve Oil (in tank cars)	Gallon	.655	.5625
Car Oil (in tank cars)	"	.335	.2475
Signal Oil (in barrels)	"	.70	.50
Illuminating Oil (in tank cars)	"	.16	.065
Packing Waste	Per Cwt.	18.00	9.00

Where we did not make purchase of material in May the prices shown are based on month of nearest purchase.

(A) Based on June, 1920 price.
(B) " " August, 1920 price.
(C) " " April, 1921 price.
(D) " " June, 1921 price.
(E) " " July, 1921 price.

175 *Affidavit of B. M. Rogers.*

Filed January 24th, 1922.

STATE OF NORTH CAROLINA,
County of Alamance, ss:

Affiant B. M. Rogers, says that he is Register of Deeds for Alamance County, and has been a resident of Alamance for years; that he has made an examination of all deeds recorded in Alamance County, from January 1, 1921, to June 30, 1921, inclusive, in which the consideration appears to be more than One Thousand Dollars ($1,000.00) and also of the assessed value of the real estate embraced in said deeds for the year of 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration of the conveyance and the assessed value of the said property for the year 1921; that when the consideration shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows: From the amount of the Federal Tax imposed and entered on the record, viz: when the consideration or value of the interest in the property conveyed, exclusive of the value of any lien or encumbrance thereon exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof in excess of $500, 50 cents; and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $517,606.00 and that the total assessed values for taxation for the year 1921 of the properties embraced in said deeds contained in said statement amount to $355,184.00. The statement is hereto attached, marked Exhibit "A."

B. M. ROGERS,
Affiant.

Subscribed and sworn to before me this 10th day of January, 1922.

MIRIAM WILLIAMS,
Notary Public.

My Commission expires 11/22/22.

Date of conveyance, month, day.	Grantor.	Grantee.	Jan. 1, 1921-June 30, 1921, consideration.		1921 assessed value.
5/1	A. E. Sykes	A. H. Fogleman	$6,000		$6,050
5/23	J. R. McNally	Flora Joyner	2,375		1,275
4/30	L. R. Blanchard	Real Est. Ins. Co.	3,770		3,953
5/24	Pleasant Dixon	John M. Baker	1,995		2,280
5/20	H. F. Mitchell	John F. Thompson	5,500	s	4,250
5/11	T. B. De Loach	Julia L. Deloach	4,000		4,000
6/4	W. B. Bowen	D. B. Wagoner	3,500		4,250
3/7	H. Glen Holt	R. A. Sharpe	2,600		2,125
6/1	J. L. Kernodle	O. H. Chaplin	5,000	s	2,175
6/23	C. B. Riddle	Mebane Real Est. & Trust Co.	5,000	s	3,000
6/4	S. G. Foster	J. M. Crutchfield	3,000		2,500
6/13	W. H. Kirkpatrick	E. T. Horne	2,000	s	1,800
6/28	Jno. W. Glosson	W. D. Bowman	1,700		765
5/30	H. T. Sharpe	S. C. Jones	2,000	s	1,403
6/20	G. B. Prickett	Stella Loy	1,800		2,720
1/10	Jno. A. Trollinger	Wm. Carter	1,567		1,424
6/4	J. M. Crutchfield	S. T. Foster	2,000		1,700
2/16	R. D. Farrell	Ala. Motor Co.	1,025		829
3/26	F. L. White	M. B. Miles	1,100		500
3/5	W. A. Cash	A. G. Ansley	2,500	s	2,338
6/28	C. M. Teer	Ala. Ins. & R. E. Co.	4,000	s	3,500
5/25	Jas. Brown	W. A. Clapp	1,750		1,530
4/30	J. T. Dick	Jno. R. Smith	2,000	s	2,550

EXHIBIT "A"—*Continued.*

Date of conveyance, month, day.	Grantor.	Grantee.	Jan. 1, 1921-June 30, 1921, consideration.		1921 assessed value.
5/14	J. R. Smith	Endora C. Smith	1,000		340
3/14	C. E. Tate	Effie A. Tate	3,500		2,965
2/1	Mebane R. E. & T. Co.	C. B. Riddle	5,000	s	3,000
2/12	" "	Alice M. Bowland	9,500		6,000
2/22	" "	Garland Hoffman	5,000	s	3,400
2/22	Ala. Ins. & R. E. Co.	C. M. Friddle	3,500		2,125
3/3	Mebane R. E. & T. Co.	Jno. A. Trollinger	30,000	s	14,760
2/1	Ala. Ins. & R. E. Co.	H. T. Baldwin	2,500		1,800
3/18	Mebane R. E. & T. Co.	J. H. McLeod	14,000	s	8,000
3/15	" "	Ben. F. Smith	3,000	s	2,288
3/15	" "	Kirkman P. & H. Co.	4,500	s	3,000
3/23	" "	B. B. Vaughn	10,000	s	5,950
3/29	Ala. Ins. & R. E. Co.	Dora I. Hinshaw	4,500		2,762
4/1	Mebane L. & M. Co.	Jas. S. Cheek	1,248		1,020
1/4	Ala. Ins. & R. E. Co.	H. B. Hunter	8,000	s	7,000
2/28	Real Est. & Ins. Co.	J. G. Levey	9,600		5,984
4/8	Ala. Ins. & R. E. Co.	B. F. Thornton	2,705		2,300
4/1	" "	W. P. Fowler	1,750		1,500
2/28	Real Est. & Ins. Co.	David R. Barber	1,250		912
5/12	Mebane R. E. & T. Co.	W. H. Trollinger	5,500	s	3,957
3/11	Ala. Ins. & R. E. Co.	C. C. Howard	9,000		850
6/8	Sta. R. & S. Co.	F. B. Carboy	3,500		3,500
6/6	Mebane R. E. & T. Co.	Margaret Clegg	13,000		5,525

6/11	Ala. Ins. & R. E. Co.	Jennie L. Lasley	1,425		1,200
1/1	Mebane R. E. & T. Co.	W. B. Bowman	5,000	s	4,250
6/24	Standard R. & S. Co.	B. W. Everett	1,500	s	1,500
6/24	Ala. Ins. & R. E. Co.	W. P. Lawrence	1,875		2,100
6/7	" "	C. W. Whitt	2,725		2,125
5/25	" "	R. L. Self & A. T. Thompson	1,250		1,000
5/5	" "	H. & C. A. Hughes	5,000	s	7,228
1/20	Mebane R. E. & T. Co.	C. F. Bradshaw	2,000	s	1,800
1/20	Standard R. & S. Co.	F. W. Moore	8,000	s	6,750
1/22	A. L. Fuquay	Jno. A. Murchison	7,000		3,396
177					
1/15	Harden & May	W. E. Payne	1,295		1,063
1/29	A. L. Pickard	——— ———	2,500	s	2,150
1/31	Beulah Allen	Ruth Hinshaw	1,000	s	528
1/1	J. H. Holt	A. B. Fitch	1,000		3,825
1/15	S. G. Morgan	Jno. H. Mebane	1,500	s	1,500
1/31	P. L. Cooper	B. Goodman & I. I. Levine	6,500		3,825
1/17	M. M. Gerringer	J. L. Jackson	3,750		2,040
2/4	J. W. Johnston	R. W. Traynham	2,500	s	3,500
2/12	L. C. Jordan	T. F. Carden	1,000		595
2/14	Robt. Montgomery	A. W. Hedgepeth	2,700		1,020
2/19	C. M. Euliss	R. Simpson	3,500		850
2/21	C. O. Smith	Peter Hughes	5,000		4,380
2/18	C. Martindale	Eli Abee	1,000		850
2/19	R. Simpson	Gile & Shepherd	2,500	s	2,550
3/7	B. D. Guthrie	T. A. Murphy	2,850		1,700
3/1	Thos. A. Smith	D. B. Moore	3,000		1,913
3/7	H. L. Graves	W. N. Thompson	1,200		1,250

EXHIBIT "A"—*Continued.*

Date of conveyance, month, day.	Grantor.	Grantee.	Jan. 1, 1921-June 30, 1921, consideration.		1921 assessed value.
2/21	J. G. Pritchett	Mebane R. E. & T. Co.	5,500		2,600
3/11	R. A. Coble	P. A. Sharpe	3,525		1,678
3/12	T. B. Deloache	S. W. Caddell	1,300		1,000
3/15	W. S. Crawford	T. C. Phillips	1,500		1,400
3/9	R. W. Malone	Mebane R. E. & T. Co.	2,250		1,318
3/7	R. M. Morrow	Nat'l R. C. Co.	13,000		12,750
3/29	Chas. A. Hinshaw	Ala. Ins. & R. E. Co.	2,300		2,000
4/1	J. H. McLeod	S. G. Morgan	1,500		1,000
2/28	J. E. Carrigan	W. J. Graham	12,000		7,750
4/1	James G. Holt	Stan. R. & S. Co.	1,500		1,000
1/11	M. R. Kirkman	E. T. Sharpe	2,000		1,360
2/5	A. L. King	L. Tillman	2,500		1,700
4/25	C. O. Smith	John H. Jordan	4,564		4,380
4/24	John A. Ireland	W. E. Herndon	1,200		850
4/25	Dora Lineberry	E. T. Horne	2,000		1,500
1/29	John A. Barnwell	David R. Haith	6,000		3,613
5/5	C. E. Tabscott	Ed. W. Ross	6,000		5,856
5/3	W. E. White	White Furn. Co.	5,000		4,500
5/14	A. D. Tate	James H. Rich	1,500	s	1,025
3/11	J. W. Fix	Addie Ray Boone	15,700		10,000
3/31	Dixie Milling Co.	Dr. J. L. Kernodle	7,000		6,373
4/7	Ala. Ins. & R. E. Co.	Mebane R. E. & T. Co.	7,500		4,000
4/1	J. T. Albright	Bessie Foust	4,200		3,400

3/16	Luco Loyd	Susan Crawford	2,250		4,637
5/12	Mrs. Lucy J. Holmes	A. D. Tate	5,500		5,000
5/2	J. W. Page	M. B. Lindsay	27,000		9,775
5/26	J. M. Fix	A. E. Sykes	1,712		1,200
4/28	D. V. Quakenbush	Nettie Oldham	3,500	s	2,500
2/18	O. J. Paris & A. M. Hadley	C. E. Coggins	3,500		2,550
6/11	N. C. Railroad Co.	Stan. R. & S. Co.	60,000		30,600
6/20	Graham R. E. Co.	Ala. Ins. & R. E. Co.	1,000		1,200
4/15	J. Dolph Long	E. B. Huffine	3,600		5,100
3/1	Central L. & T. Co.	H. Frank Mitchell	1,700.00		808
		Total	$170,426.00		$108,867.00

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Columbus	L. V. Grady	228,820.00	167,222.00	73.08
Craven	Wm. Dunn, Jr.	379,831.66	310,610.00	81.77
Cumberland	E. L. Hall	414,122.03	270,615.00	65.35
Currituck	P. G. Sawyer and M. B. Simpson	108,781.86	72,210.32	66.37
Dare		.....	.....	....
Davidson	W. H. Phillips	478,760.00	258,653.00	54.02
Davie	J. S. Daniel	35,438.00	28,308.00	79.88
Duplin	H. L. Stevens	87,165.00	62,250.00	71.41
Durham	M. G. Markham	492,250.00	336,532.00	68.40
Edgecombe	J. L. Bridgers	209,382.24	133,055.00	63.00
Forsyth	Phillip L. Kainer, R. G. Parker, C. A. Vogler	139,311.57	1,526,368.70	71.34
Franklin	Hugh W. Perry	75,458.29	43,472.00	57.60
Gaston	Cecil C. Cornwell	202,167.00	136,974.00	67.70
Gates	P. L. Hoffler	133,575.00	84,760.00	63.45
Graham	A. H. Eller	39,904.50	17,486.00	43.82
Granville	C. G. Powell	272,387.87	141,930.00	52.10
Greene		.....	.....	....
Guilford	John H. McAdoo	2,337,104.00	1,627,041.00	69.61
Halifax	R. C. Dunn	237,303.50	125,777.50	54.69
Harnett	J. C. Clifford	116,685.00	70,045.00	60.03
Haywood	T. Troy Wyche	221,720.83	129,342.00	58.33
Henderson	Mrs. J. E. Bishop	678,562.05	591,194.05	87.00

180	Hertford	J. E. Vann	100,226.00	67,268.00	67.12
	Hoke	Oscar Leach	24,042.25	22,325.00	92.85
Hyde		Elmo Mann	84,712.50	60,905.00	71.90
Iredell		John L. Millholland	224,435.00	155,250.00	69.17
Jackson		Raymond R. Nicholson	190,967.00	44,125.00	23.10
Johnston		E. F. Ward	382,507.56	224,047.25	58.57
Jones		John R. Barker	204,486.00	117,763.00	57.58
Lee		D. E. Melver	90,027.00	74,457.00	82.70
Lenoir		C. W. Pridgen	212,579.06	191,465.00	90.06
Lincoln		John E. Hoover	217,764.00	111,146.00	52.40
Macon		J. F. Ray	32,275.00	19,775.00	61.26
Madison		J. Will Roberts	29,780.00	18,327.00	61.54
Martin		H. W. Stubbs	623,064.03	238,679.00	38.31
McDowell		H. R. Ledbetter	93,675.00	54,480.00	58.16
Mecklenburg		Geo. M. Phifer	3,169,115.25	1,815,279.50	57.28
Mitchell		J. D. Pannell	93,991.00	65,056.00	69.21
Montgomery		W. L. Wright	244,638.00	158,764.00	64.89
Moore		N. A. McKeithen	210,678.00	119,410.00	56.70
Nash		J. P. Bunn	361,740.43	165,891.00	45.85
New Hanover		Wm. L. Smith	989,207.00	866,550.00	87.60
Northampton		P. F. Calvert	54,848.00	48,620.00	88.64
Onslow		Frank Thompson	82,418.00	75,475.00	91.46
Orange		J. F. McAdams	162,269.00	120,706.00	74.38
Pamlico		G. V. Rawls	41,150.00	15,556.00	37.80
Pasquotank		P. G. Sawyer and M. B. Simpson	188,681.15	126,778.00	67.14
Pender		J. T. Bland	90,000.00	64,885.00	72.90
Perquimans		W. F. C. Edwards	95,002.00	87,775.00	92.39
Person		A. P. Clayton	59,124.00	45,570.00	77.07

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Pitt	C. F. Manning — J. C. Gaskins	459,976.50	383,157.00	83.00
Polk	W. C. Hague	40,743.20	28,929.00	71.00
Randolph	John M. Brittian	235,365.00	135,150.00	57.42
Richmond	H. V. Guthrie	80,070.00	55,610.00	69.40
Robeson	Wade Wishart	119,272.00	68,004.00	57.00
Rockingham	Nurna Winstead	815,821.00	524,584.00	64.30
Rowan	Max L. Barker	179,097.90	130,391.75	65.52
Rutherford	M. T. Wilkie	106,706.93	79,672.00	74.70
Sampson	H. A. Grady	222,556.00	110,837.00	49.80
Scotland	T. J. Dunn	61,200.00	39,561.00	64.64
181				
Stanley	George P. Palmer	151,374.00	119,256.00	78.78
Stokes	N. Earl Wall	169,465.00	100,339.00	59.20
Surry	B. F. Folger	198,624.00	108,860.00	54.80
Swain	D. E. Nichols	55,435.00	40,374.00	72.80
Transylvania	Roland Owen	39,950.00	24,870.00	62.25
Tyrell	A. Melson	48,603.33	34,232.00	70.41
Union	M. L. Flow	473,906.00	331,924.00	70.00
Vance	Robert G. Kittrell	500,066.00	307,311.00	61.50
Wake	H. E. Glenn	810,175.00	716,648.00	88.45
Warren	E. C. Price	131,427.33	69,200.00	52.60
Washington	Z. V. Norman	112,102.50	58,230.50	51.95
Watauga	T. E. Bingham	207,632.00	133,018.00	64.07
Wayne	D. E. Grantham	244,675.00	87,851.00	35.91

Wilkes	Frances Hendren	113,512.40	66,214.00	58.33
Wilson	R. L. Brinkley	304,964.00	191,107.00	63.44
Yadkin	John D. Reece	71,495.00	48,128.50	67.31
Yancey	C. C. Caraway	194,974.00	173,972.00	89.22
Total		$30,598,475.24	$20,373,684.07	66.58%

(Signed) C. J. O'BRIEN.

Subscribed and sworn to before me, this 24th day of January, 1922.

L. L. BLAYLOCK,
Clerk U. S. Dist Court.

182 *Opinion.*

Filed March 18, 1922.

In the District Court of the United States.

In Equity.

SOUTHERN RAILROAD COMPANY, ATLANTIC AND YADKIN RAILWAY Company, Atlantic Coast Line Railroad Company, Seaboard Air-line Railway Company, Norfolk-Southern Railroad Company

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, and Others.

Before Waddill, Circuit Judge, Boyd and Connor, District Judges.

Per Curiam:

Bills were filed in equity by the above named companies, to-wit: The Southern Railroad Company and the Atlantic and Yadkin Railway Company, in the United States District Court for the Western District of North Carolina and the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk-Southern Railroad Company, in the Eastern District of North Carolina, against the defendants A. D. Watts and A. D. Watts as Commissioner of Revenue, Baxter Durham, Auditor, Benjamin R. Lacy, Treasurer, and James S. Manning, Attorney General of North Carolina, in which, for the causes therein set forth, they and each of them prayed for an interlocutory injunction restraining and enjoining the said defendants, in their individual and official capacity, from proceeding with the collection and the enforcement of payment against complainants, of certain taxes assessed or about to be assessed against complainants and their property, until the

183 final hearing of said causes for that, among other things alleged in the bills, the statutes of the State of North Carolina under, and pursuant to which, said taxes were assessed and sought to be enforced, were unconstitutional and void. Pursuant to the provisions of Section 266 of the Judicial Code, James E. Boyd, Judge of the Western District, called to his assistance in hearing said motions for interlocutory injunction in said causes, brought in the Western District, Edmund Waddill Jr., Circuit Judge of the Fourth Circuit, and H. G. Connor, Judge of the District Court of the Eastern District of North Carolina, and H. G. Connor, Judge of the Eastern District, called to his assistance in hearing said motions, brought in the Eastern District, Edmund Waddill Jr., Circuit Judge of the Fourth Circuit and James E. Boyd, Judge of the District Court of the Western District of North Carolina.

As required by the provisions of the statute, the said district judges in the causes pending in said District made orders in which

they directed the defendants to show cause, at a time and place therein named, why the interlocutory injunctions would not be granted as prayed for.

The motions in said causes were, by consent of the complainants and the defendants, by their attorneys, heard together, at Greensboro North Carolina, on January 14th, 1922, when and where said judges being present said motions were heard upon the bills, answers, affidavits exhibits and argument of counsel, for all parties in said causes.

The further consideration of the motions was, by consent of the counsel and order of the court, continued to Raleigh, North Carolina, on March 16, 1922, when and where said judges being present, proceeded to consider said motions upon the pleadings, affidavits, exhibits and briefs filed by counsel.

It appears from the bills and answers that the said motions
184 and prayer for final relief of complainants are based upon the following allegations and contentions.

(1)

That the property of complainants was not assessed in the same manner and by the same method as the property of the individual citizens of the state and that, the manner and methods by which complainants' property is appraised and assessed for taxation operates as an unjust and unlawful discrimination against complainants, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and that, thereby, complainants are deprived of their property without due process of law.

(2)

That the appraisal and assessment for taxation of the property of complainants are not made in accordance with the provisions of the Constitution and Statutes of the State of North Carolina and that said appraisal and assessment of taxes thereon are invalid.

(3)

That the appraisal of the value of complainants' property is in excess of its true value for the purpose of taxation as provided by the Constitution of North Carolina and is, therefore, invalid.

(4)

That the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States in the appraisal and assessment of complainants' property are violated, in that complainants' property, alleged by the State to be assessed at its true value for taxation, the property of other tax payers in the state, is appraised and assessed for taxation at less than its true value.

185 That the Franchise or Privilege Tax imposed upon complainants is invalid for that:

(1)

The ad valorem assessment is in excess of its true value for taxation and that the Franchise or Privilege Tax, based thereon, in accordance with the Statutes of the State, violates the Constitution of the United States and the State of North Carolina.

(2)

The Franchise or Privilege Tax is in truth and fact an ad valorem Tax and invalid, because not imposed upon the property of other citizens of the State.

(3)

That the Statute of North Carolina, under and pursuant to which the Franchise or Privilege Tax is imposed and sought to be enforced imposes a tax upon the privilege of doing business by complainants, both interstate and intrastate and is, therefore, a burden upon interstate commerce and thereby violates the Commerce Clause of the Constitution of the United States.

(4)

That, if the Franchise or Privilege Tax imposed upon complainants be valid, the method of ascertaining the value of complainants' property as a basis for fixing the amount of said Franchise or Privilege Tax includes property of complainants used, as well in interstate as well as intrastate business and is, therefore a burden upon interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

The Court, after consideration of the bills, exhibits, affidavits and argument of counsel. is of the opinion that, for the purpose of this motion only, complainants have neither in their pleadings,
186 nor upon the proofs adduced, made such a case as to entitle them to have an interlocutory injunction in said causes as prayed for, and the motions for such interlocutory injunctions in respect to the ad valorem and the Franchise and Privilege Tax should not be granted and said motions and each of them are denied.

The Court being of the opinion that the contentions sought to be made by complainants in regard to the imposition and enforcement of the Income Tax against complainants, as provided by the Constitution of North Carolina, Article V, Section 3, as amended, and the statutes enacted by the Legislature pursuant thereto and for the enforcement thereof are not presented upon the bills and proofs herein.

The Court, therefore, does not pass upon, or express any opinion with respect to the validity of the Income Tax, or the Statutes en-

acted for its enforcement. Complainants may, in respect to such income tax. proceed without prejudice in such manner as they may be advised.

Let this opinion and a copy thereof, be filed and an order drawn and signed to be filed in the record in each of said causes in accordance therewith.

The further proceedings in said causes, in the Courts of the District, in which they are pending, will be had as provided by the Judicial Code and the course and practice of said courts. The costs of the motion will abide the final decree in said causes.

At Raleigh, North Carolina.

This the 18th day of March, 1922.

EDMUND WADDILL,
United States Circuit Judge, Fourth Circuit.
JAS. E. BOYD,
U. S. District Judge, Western District of No. Ca.
H. G. CONNOR,
U. S. District Judge, Eastern District of No. Ca.

187 *Order.*

Filed March 18, 1922.

In the United States District Court for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY CO., Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This cause came on this eighteenth day of March 1922, before the United States District Court for the District of North Carolina, held by the undersigned three United States Judges sitting pursuant to the provisions of Section 266 of the Judicial Code, to be heard upon a motion for an interlocutory injunction to enjoin and restrain the State of North Carolina from collecting certain taxes enumerated in the complainant's bill, which motion was heard and considered upon the pleadings, and the affidavits filed respectively by the complainant and the defendants, and was argued by counsel. Whereupon the court composed of the three judges sitting as aforesaid, having filed an opinion denying the right of the complaint to have an interlocutory injunction, it is, for reasons stated in writing in said opinion filed in this cause, and pursuant thereto, adjudged, Ordered and decree that said injunction so prayed for be and the same is hereby refused and denied. And it is further

ordered that the defendants shall not proceed to enforce the
188 collection of taxes involved in this litigation, for the period of thirty days from the date of this order, to the end that the complainant may take such action in the premises as it is advised to.

EDMUND WADDILL, JR.,
United States Circuit Judge,
Fourth Judicial Circuit.
JAS. E. BOYD,
United States District Judge,
Western District of North Carolina.
H. G. CONNOR,
United States District Judge,
Eastern District of North Carolina.

188½ In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. —.

ATLANTIC AND YADKIN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Petition for Appeal to the Supreme Court of the United States and Assignments of Error.

S. R. Prince,
Solicitor for Complainant.

L. E. Jeffries,
Manly, Hendren & Womble,
A. B. Andrews,
C. O. Amonette,
Of Counsel.

189 *Petition for Appeal.*

Filed March 31, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC AND YADKIN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

To the Honorable James E. Boyd, District Judge of the United States for the Western District of North Carolina:

The Atlantic and Yadkin Railway Company, the above named Complainant, feeling aggrieved by the Order of the Court, consisting of Circuit Judge Waddill and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code of the United States, entered in the above entitled cause on the 18th day of March, 1922, refusing and denying the interlocutory injunction applied for in this cause to restrain the Defendants, until
190 the case could be heard on its merits, does, as provided in Section 266 of the Judicial Code of the United States, hereby appeal to the Supreme Court of the United States from the Order refusing and denying the interlocutory injunction applied for upon the grounds set forth in the assignments of error filed herewith, and complainant prays that its appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings, and documents upon which said appeal is based, duly authenticated, be sent to the Supreme Court of the United States, under the rules of such Court in such cases made and provided.

And complainant further prays that the court enter an order continuing in effect the thirty day stay granted by the court in the order entered March 18, 1922, until the appeal herein prayed for shall have been heard, passed upon and disposed of by the Supreme Court of the United States.

ATLANTIC AND YADKIN RAILWAY COMPANY,
By S. R. PRINCE,
Solicitor.

191 In the Dist. Court of the U. S. for the Western Dist. of N. C.

In Equity.

No. —.

ATLANTIC & YADKIN RY. CO., Complainant,

vs.

A. D. WATTS & A. D. WATTS, as Comr. of Rev., et al.

Assignments of Error.

Filed March 31", 1922.

Now comes the complainant, in the above entitled cause, and in connection with its petition for appeal from the order entered March 18, 1922 (by the court convened under Section 266 of the Judicial Code of the United States), denying the motion for interlocutory injunction, files the following assignments of error:

The Court erred:

(1) In decreeing that the interlocutory injunction be denied.

(2) In holding that for the purpose of the motion for an interlocutory injunction only, complainant neither in its pleadings, nor upon the proof adduced, is entitled to have the interlocutory injunction applied for.

(3) In failing to hold that the assessment of complainant's property for taxation is in excess of its "true value" in money for the purpose of taxation as required by the Constitution of North Carolina and is therefore invalid.

(4) In failing to hold that the appraisal of complainant's property for taxation is not made in accordance with the provisions of the Constitution and Statutes of North Carolina, and that said appraisal and assessment of taxes are invalid and illegal.

192 (5) In failing to hold that the manner and method by which complainant's property was assessed is illegal and operates as an unjust and unlawful discrimination against complainant in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and that thereby complainant is deprived of its property without due process of law and denied the equal protection of the law.

(6) In failing to hold that the action of the Commissioner of Revenue, in declining to make a reduction in the value of complainant's property commensurate with the horizontal reductions made by the taxing authorities under the North Carolina law permitting such reductions on other property generally, was unjust dis-

crimination, contrary to the Uniformity Clause of the Constituton of North Carolna and the Fourteenth Amendment to the Constitution of the United States.

(7) In failing to hold that the Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States are violated, in that complainant's property is alleged by the State to be assessed at its true value for taxation, while the property of other taxpayers generally in the State is appraised and assessed for taxation at less than its true value in money and that this appraisal and assessment of the property
193 of other citizens and taxpayers of the State has been long continued and is arrived at under a scheme of taxation which shows intent to place an undue burden of taxation upon complainant and its property.

(8) In failing to hold that the scheme of taxation of the State of North Carolina and the assessment of the properties of the various classes of taxpayers is by settled purpose and intent so designed and carried out that, while the property of complainant is assessed at its true value in money, or more than its true value in money, the large proportion of the property in the State is assessed at less than its true value in money, thereby casting an undue and excessive burden upon complainant, in violation of the Uniformity Clause of the Constitution of the State of North Carolina and in violation of the Fourteenth Amendment to the Constitution of the United States.

(9) In failing to hold that the ad valorem assessment being in excess of true value for taxation, the so-called Franchise tax based thereon violates the Constitution of North Carolina and the Constitution of the United States.

(10) In failing to hold that the so-called Franchise or Privilege tax is in truth and in fact an additional ad valorem or property tax upon complainant's property and is illegal and invalid be-
194 cause levied for the support of the State and is not levied equally upon the property of other citizens and taxpayers of the State and the enforcement of such void statute deprives complainant of its property without due process of law, contrary to the Constitution of the United States.

(11) In failing to hold that the so-called Franchise or Privilege tax is under the statute imposed as a license or privilege tax for the privilege of engaging in inter and intrastate commerce and is, therefore, a burden upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

(12) In failing to hold that if the Franchise or Privilege tax be imposed for the privilege of engaging in intrastate commerce, it is measured in part by the value of the privilege of engaging in interstate commerce, in that it is based upon the entire value, including values derived from use in interstate commerce, and is, therefore, a burden imposed upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

(13) In failing to hold that if the so-called Franchise or Privilege tax be imposed for the privilege of engaging in intrastate commerce, the tax should have been assessed against complainant
195 upon one-half of the ad valorem value, as provided in Section 82 (3½) of the Revenue Act of North Carolina of 1921, and that the tax assessed against complainant upon the full value of its property is, therefore, contrary to law and void.

(14) In failing to hold that the payment of the so-called Franchise or Privilege tax is exacted as a condition precedent to the right of complainant to do "any business" in the State, whether interstate or intrastate, and, therefore, unconstitutional and void.

(15) In failing to hold that the assessment made is void, in that it includes in the value used as a basis for arrival at the Franchise or Privilege tax the value of property not used in the business for which the privilege tax is exacted and such law and the enforcement thereof in the manner set forth violates the Fourteenth Amendment to the Constitution of the United States.

(16) In failing to hold that the tax system of the State of North Carolina, which includes an ad valorem tax on the full value of its property in the State, including as a part thereof value it has due to its use in interstate commerce, plus a Franchise or Privilege tax upon the full value of the said property for ad valorem purposes, plus an income tax of three per cent on its net operating income,
196 does in practical operation result in a burden upon interstate commerce and violates the Commerce Clause of the Constitution of the United States.

Wherefore, plaintiff prays that the decree be reversed and that the court may be directed to enter a decree allowing the interlocutory injunction.

S. R. PRINCE,
Solicitor for Complainant.

L. E. JEFFRIES,
MANLEY, HENDREN & WOMBLE,
A. B. ANDREWS,
C. O. AMONETTE,
Of Counsel.

197 *Notice of Application of Southern Railway Company for Stay of Proceedings and Order.*

Filed March 31, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

To the defendants in the above entitled action and Honorable James S. Manning, Attorney General of North Carolina, and Frank Nash, Assistant Attorney General, Solicitors for defendants:

You will please take notice that on Friday, March 31st, 1922, at 10:00 o'clock A. M., or as soon thereafter as counsel may be heard, the above named complainant will apply to His Honor, James E. Boyd, United States District Judge for the Western District of North Carolina, at office in Greensboro, N. C., for an order allowing the complainant to appeal to the Supreme Court of the United States and granting a stay of proceedings until the appeal shall have been heard, passed upon and disposed of by the Supreme Court of the United States.

SOUTHERN RAILWAY COMPANY,
By S. R. PRINCE, *Solicitor.*

198 *Order Continuing Petition for Appeal and for Stay.*

Filed March 31st, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

The petition of complainant for appeal and for an order staying the proceedings pending appeal came on to be heard this date, and,

upon application of defendants for a continuance, it is ordered that the petition for appeal and for stay be and it is continued to 10 A. M., April 10, 1922, at Greensboro N. C.

JAS. E. BOYD,
U. S. Judge.

March 31, 1922.

199 *Order Allowing Appeal & Fixing Bond.*

Filed April 10, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 262.

ATLANTIC & YADKIN RAILWAY CO., Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This matter coming on to be heard on the application of complainant for an appeal to the Supreme Court of the United States, under Section 266 of the Judicial Code of the United States, from the decree entered in this cause on the 18th day of March 1922, refusing and denying the interlocutory injunction applied for; and upon the assignment of errors filed in said cause and presented to the Court with the said application for appeal and for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18, 1922, until the appeal prayed for shall have been heard, passed upon and disposed of by the Supreme Court of the United States;

And all parties being represented by counsel now before the Court on due notice.

It is ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the order and decree filed and entered herein on the 18th day of March 1922, refusing and denying the interlocutory injunction prayed for, upon the giving of bond in the sum of $1,000.00.

It is further ordered that citation of appeal issue and be served upon the defendants or their attorney of record, and that the Clerk of this Court prepare and forward to the Supreme Court of the United States a transcript of the record of the proceedings, pleadings, affidavits etc., upon which the judgment herein was rendered, duly authenticated.

200 The Court being of the opinion that the application to continue in effect the thirty day stay granted March 18, 1922 by the Court, consisting of Circuit Judge Waddill and District

Judges Connor and Boyd, should more properly be heard and passed upon by the three judge court, that part of the petition of complaint is not now ruled upon, but is continued for hearing before the three Judges on a date to be later fixed, and the appeal hereinbefore allowed is without prejudice to complainant as to time of the hearing of the matter of further stay asked for.

This 10th day of April 1922.

JAS. E. BOYD,
U. S. Judge.

201 *Appeal Bond.*

Filed April 10th, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

ATLANTIC & YADKIN RAILWAY CO.

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Know all men by these presents: That we, the Atlantic and Yadkin Railway Company, a corporation organized and existing under the laws of the State of —— as principal, and Fidelity and Deposit Company of Baltimore, Md., as surety, are held and firmly bound unto the above named A. D. Watts, and the other defendants in the sum of One thousand ($1,000.00) Dollars, to be paid to the said A. D. Watts and other defendants, their successors or assigns; to which payment, well and truly to be made, we bind ourselves and our successors jointly and severally by these presents.

Sealed with our seals and dated this 10th day of April, 1922.

Whereas in a suit pending in the District Court of the United States for the Western District of North Carolina between Atlantic & Yadkin Railway Company, Complainant, and A. D. Watts et al. defendants, a decree was rendered by the court, consisting of Circuit Judge Waddill, and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code, denying the com-

202 plainant an interlocutory injunction as prayed for, and the Atlantic & Yadkin Railway Company having prayed and been allowed an appeal under Section 266 of the Judicial Code of the United States, direct to the Supreme Court of the United States, and filed a copy thereof in the Clerk's Office of the said Court, and citation having issued, directed to the said A. D. Watts et al., citing and admonishing them to be and appear in the Supreme Court of the United States within the time required by law.

Now, the condition of the above obligation is such, that if the said Atlantic & Yadkin Railway Company shall prosecute its said

appeal to effect, and answer all damages and costs if it fails to make its appeal good, then the above obligation to be void; else to remain in full force and effect.

ATLANTIC & YADKIN RAILWAY COMPANY,
By S. R. PRINCE,
General Solicitor.
FIDELITY AND DEPOSIT COMPANY OF MARYLAND.
EDWARD J. CARPENTER, [SEAL.]
Attorney-in-Fact.

Approved this 10th day of April 1922.

JAS. E. BOYD,
U. S. District Judge.

203 *Citation and Acceptance of Service.*

Filed April 10, 1922.

UNITED STATES OF AMERICA:

The President of the United States to A. D. Watts and A. D. Watts, as Commissioner of Revenue, et al., Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be holden at the City of Washington, on the 8th day of May next, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Western District of North Carolina, wherein Atlantic and Yadkin Railway Company is Plaintiff and you are defendant- in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said appeal mentioned, should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand in the City of Greensboro, N. C., in the District above named, this 10th day of April 1922.

JAS. E. BOYD,
Judge of the District Court of the United States for the Western District of North Carolina.

Service of within citation accepted for all defendants April 10th 1922.

A. D. WATTS,
Commissioner of Revenue, and
OTHER DEFENDANTS,
By WM. P. BYNUM,
Attorney.

204 *Stipulation of Counsel.*

Filed April 13, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 261.

ATLANTIC & YADKIN RAILWAY CO., Complainant,

—

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

It is stipulated and agreed by and between the parties to the above entitled cause;

That the Clerk, in making up the transcript of record on this appeal from the order denying complainant's motion for an interlocutory injunction, shall include therein all pleadings, orders, motions, stipulations, affidavits and exhibits, constituting the entire record before the Court, except there may be omitted from the record the following;

(1) Exhibit A to the Additional Affidavit of M. R. Hubbard, which exhibit was a printed copy of the Rules of the Interstate Commerce Commission Govering Separation of Operating Expenses of Railways and Railway Accounting as Prescribed by the Interstate Commerce Commission.

(2) The Clerk shall not include as a part of the transcript the individual affidavits of the Registers of Deeds of the 100 Counties in the State of North Carolina, together with the tabulated lists of conveyances recorded from January 1, 1921 to June 30, 1921, and setting forth opposite each conveyance the consideration in the deed and the assessed value for taxation of the property conveyed.

(3) Return of the service of the notice of the hearing on plaintiff's application for an interlocutory injunction.

(4) Return of the service of the writ upon the various defendants.

(5) Statement attached to McCarthy's affidavit consisting of name of stock or bond par value, and market value, and total
205 market value for the years 1917, 1918, 1919, 1920 and 1921. The purpose here being to have in this transcript the affidavits as it was printed for the hearing before the three-judge Court.

The Clerk shall include as a part of the transcript one of said affidavits, to-wit; that of B. M. Rogers, Register of Deeds for

Alamance County, N. C. together with the tabulated statement of deeds recorded and the deed value of each parcel conveyed and the assessed value for taxation of each parcel so conveyed, this one being typical of all as to the form and character of information contained therein. It is unnecessary to set forth the individual affidavits of deed and tax value taken from the records of each separate County in the State, because the information shown on said separate affidavits, containing the deed value of separate conveyances and a comparison of the tax assessment of each said parcel, is summarized in the affidavit of C. J. O'Brien, which is to be included in the transcript.

It is further stipulated that the Clerk may use in preparing the record on appeal printed copies of all such pleadings, documents, affidavits etc., as may be furnished by the parties hereto.

S. R. PRINCE,
Solicitor for Complainant.
JAMES S. MANNING,
Attorney General of N. C.,
Solicitor for Defendants.
FRANK NASH,
Assistant Attorney General.

206 *Order Denying Stay and Granting 30 Days to Make Application to Supreme Court.*

Filed April 18, 1922.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

No. 162.

ATLANTIC & YADKIN RAILWAY COMPANY, Plaintiff,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This matter coming on to be heard at Raleigh, North Carolina, on April 15, 1922, on the application of plaintiff for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18, 1922, until the appeal heretofore taken shall have been heard, passed upon, and disposed of by the Supreme Court of the United States, and all parties being represented by counsel now before the Court;

The Court, being of the opinion that the application to continue in effect the thirty day stay granted March 18, 1922, until a review and decision can be had by the Supreme Court of the United States on the appeal heretofore taken from the order of this court, denying the interlocutory injunction, should be presented to the Supreme Court of the United States, denies the application for continuance of

said stay until the appeal is decided by the Supreme Court of the United States.

And it appearing to the Court that the hearing of this application has been delayed through no fault of plaintiff's, and the Court being of the opinion that the status quo should be continued until the application for restraint pending the appeal can be made to and decided by the Supreme Court of the United States, orders that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order.

EDMUND WADDILL, JR.,
U. S. Circuit Judge, Fourth Judicial Circuit.
JAS. E. BOYD,
U. S. District Judge, Western District of North Carolina.
H. G. CONNOR,
U. S. District Judge, Eastern District of North Carolina.

207 *Order to Transmit Record.*

And thereupon it is ordered by the Court here, that a transcript of the record and proceedings in the cause aforesaid together with all things thereunto relating be transmitted to the said Supreme Court of the United States of America, and the same is transmitted accordingly.

R. L. BLAYLOCK,
Clerk,
By H. M. CAUSEY,
Deputy Clerk.

UNITED STATES OF AMERICA:

In the District Court for the Western District of North Carolina.

I, R. L. Blaylock, Clerk of the District Court of the United States, for the Western District of North Carolina, do hereby certify that the above and foregoing is a full, true, and complete copy of the record, according to the Stipulation of Counsel hereto attached as appears from the original papers and records in this office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, at office in the City of Greensboro, in said District, on this the 18th day of April A. D. 1922.

[Seal of United States District Court, Western Dist. of N. C.]

R. L. BLAYLOCK,
Clerk U. S. District Court,
By H. M. CAUSEY,
Deputy Clerk.

Endorsed on cover: File No. 28,883. W. North Carolina D. C. U. S. Term No. 928. Atlantic and Yadkin Railway Company, appellant, vs. A. D. Watts and A. D. Watts, as commissioner of revenue, et al. Filed April 25, 1922. File No. 28,883.

In the Supreme Court of the United States.

October Term, 1922.

No. 369.

ATLANTIC & YADKIN RAILWAY COMPANY, Appellant,

vs.

A. D. WATTS et al., Appellee-.

In this cause, it appearing to counsel for appellant and appellee that the Transcript of Record in this cause from pages 25 to 45, both inclusive, which sets forth the answer in the suit of "Atlantic Coast Line Railroad Company vs. A. D. Watts, Et Al." is an error; and it further appearing to counsel for both parties that there is omitted from the transcript in the case of "Atlantic & Yadkin Railway Company vs. A. D. Watts, Et Al." the answer of the defendant, counsel do now stipulate that the attached answer is a true copy of the answer in said cause and should be a part of the record herein.

Oct. 2nd, 1922.

S. R. PRINCE,
Counsel for Appellant.
JAMES S. MANNING,
Atty. Genl., Counsel for Appellee.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

ATLANTIC AND YADKIN RAILWAY COMPANY

v.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et als.

Answer.

Come now A. D. Watts and the other defendants in the above entitled suit and, answering the complaint filed by the plaintiff therein, say:

1. The allegations of article one are admitted. The defendants aver that the plaintiff is a domestic corporation with its entire line of railroad lying within North Carolina and that the principal business of the plaintiff is the transportation of freight and passengers in intrastate commerce from points within the State of North Carolina to other points within that State.

2. The allegations of article two are admitted.

3. The allegations of article three and the sections thereof are admitted, except as hereinafter stated.

Section 64 of the Machinery Act of 1921, referred to in subsection (*e*) of article three of the complaint, did not make it the duty of the Commissioner of Revenue to do the things therein stated, but made it the duty of the State Tax Commission. Thereafter there was enacted a separate statute, ratified March 8, 1921, being Public Laws, Session 1921, page 388, whereby the powers and duties of the State Tax Commission were transferred to and imposed upon the Commissioner of Revenue. That statute, however, and the said Section 64 of the Machinery Act of which it was amendatory, did not require the Commissioner of Revenue to assess the property of railroads for taxation for the year 1921 or for any year thereafter until 1924. The State Tax Commission had made the assessment of railroad properties in North Carolina for taxation for 1920, and the said assessment had been approved by the General Assembly of North Carolina at the Extra Session of 1920, Public Laws 1920, Chapter 1, and adopted as the basis for taxation for the years 1920 to 1923, inclusive. The only power with reference to assessments of railroad properties given to the Commissioner of Revenue by the Public Laws of 1921 was the power to review such assessments given by the Machinery Act of 1921, Section 28 (*g*).

Section 65 of the said Machinery Act referred to and the proviso thereof quoted in subsection (*f*) of article three of the complaint is the statute particularly controlling the assessment of the property for taxation of railroads doing interstate commerce, operating both within and without North Carolina.

The said Section 82 (6½) of the Revenue Act of 1921, referred to and quoted in subsection (*g*) of the third article of the complaint, was first enacted by the General Assembly at the Extra Session of 1920, Public Laws 1920, Chapter 1, Section 7 (*d*), and was carried forward without change in the Revenue Act of 1921. The said Section 82 (6½) was a substitute for Sections 77 and 78 of the Revenue Act of 1919, which imposed a privilege tax on railroads for the privilege of doing intrastate business in North Carolina, based on gross earnings per mile within the State. The provisions of Sections 77 and 78 of the Revenue Act of 1919 had existed in the laws of North Carolina for many years. The said Section 82 (6½) substituted for the old privilege tax on gross earnings per mile a new form of privilege or franchise tax upon all railroads for the privilege of doing intrastate business within North Carolina, based on the total properties of each of said railroads within North Carolina as assessed under the Machinery Act for ad valorem taxation.

The allegations of section (*h*) of article three of the complaint are admitted, and it is alleged that the said income tax is not only levied upon railroads, but that the same tax is levied in the same way upon all corporations doing business in North Carolina, foreign and domestic, railroad corporations, and others, equally and without discrimination.

4. The allegations of article four of the complaint are admitted, except as hereinafter qualified or denied. The Revenue Commis-

sioner did not, in 1921, assess the properties of the plaintiff for ad valorem taxes at $4,104,710, as alleged; he made no assessment of the said properties and had no authority under the law to make such assessment. His only authority was to review the assessment of 1920 made by the State Tax Commission and approved by the General Assembly as aforesaid, on an application by the plaintiff for a review of the said assessment. He did review the assessment made by the State Tax Commission for 1920 and carried forward for 1921 as he was authorized to do by law, upon the petition of the Southern Railway Company, owner of the plaintiff as hereinafter alleged.

It is denied that at the hearing before the Revenue Commissioner facts were adduced showing that the said valuation was in excess of the true actual value of the property as the said term is defined in Section 28 (*e*) of the Machinery Act, but on the facts adduced at that hearing and the evidence before the Commissioner of Revenue he was convinced, and adjudged, that the said value was the true actual value of the property and should stand without change as the assessment of the plaintiff's property for taxation. Upon the petition of the plaintiff, through its owner, the Southern Railway Company, for a further review by the State Board of Equalization, the Commissioner of Revenue sitting with the board and as a member thereof, granted the application for the hearing and after due consideration of the documents filed and the arguments and statements made was of opinion that the valuation theretofore made by the State Tax Commission was fair and just and with the advice and approval of the other members of the Board declined to change or reduce the same.

5. The allegations of article five of the complaint are denied, except as hereinafter specifically admitted. Further answering that article the defendants say that the said assessment of the plaintiff's property in North Carolina for 1921 being the assessment made by the State Tax Commission for 1920 and brought forward by the Commissioner of Revenue for 1921, was the true value in money of the said property for tax purposes for the said years as the same is defined in Section 28 (*e*) of the Machinery Act. It is denied that the State Tax Commission or the Commissioner of Revenue has not advised the plaintiff of the separate amounts or values at which its tangible property and its franchise or intangible property were assessed for taxation. The defendants deny that they have knowledge or information sufficient to form a belief as to what advice the State Tax Commission gave the plaintiff in 1920 as to its method of arriving at the assessment of plaintiff's property made by the said Commission for the years 1920 to 1923, inclusive. It is admitted that the plaintiff was advised that the aggregate value of its physical or tangible property and of its franchise or intangible property for 1921 was $4,104,710 for the purpose of ad valorem taxation, the same amount at which the said property of the plaintiff was assessed for taxation by the State Tax Commission in and for the year 1920, and the defendants aver that the said assessment was correct, legal, and represented the true actual value of the said property for both the

years 1920 and 1921. It is admitted that in 1920 the State Tax Commission assessed all of the lines operated by the Southern Railway Company, including the plaintiff's, together at the amount of $101,960,413 and then apportioned this total assessment to the Southern Railway Company, to the plaintiff, and to other railroads operated as a part of the Southern Railway System. It is admitted that the part of this total assessment allocated to the plaintiff by the State Tax Commission was $4,104,710. The apportionment of the total of $101,960,413, and the allocation to the plaintiff of $4,104,710, was made by the State Tax Commission in accordance with the plan suggested by the plaintiff and the Southern Railway Company themselves by letter to the State Tax Commission from Mr. Hubbard, Tax Commissioner of the Southern Railway System, written to the State Tax Commission of date July 21, 1920.

It is denied that the State Tax Commission used the method of capitalization of the net income for North Carolina of the plaintiff and other railroads operated by the Southern Railway Company exclusively in arriving at the said assessment. As required by Section 64 of the Machinery Act the State Tax Commission, in 1920, in determining the value of the tangible and intangible property of the plaintiff for purposes of taxation gave due consideration to all those factors, modes, and methods therein required to be considered. As further required by Section 65 of the Machinery Act, in determining the said total assessment for the Southern Railway System, the State Tax Commission gave due consideration to the character of the road bed and fixed equipment in North Carolina; to the number of miles of double track in the said State; to the amount of gross and net earnings per mile of road in this State; and to all other factors in the possession of the State Tax Commission which would give a greater or less value per mile of road in this State than the average value for the plaintiff's entire system.

By the application of the foregoing methods required by the said statute to be used, except the capitalization of net income method and the stock-and-bonds method, the State Tax Commission arrived at a figure for the valuation of the said properties operated as a part of the Southern Railway System in excess of the $101,960,413, at which they were actually assessed. By a due consideration then of the capitalization of net income for the State of North Carolina at 6 per cent and of the market value of the plaintiff's stocks and bonds and other securities, this figure was reduced in favor of the plaintiff and other railroads in the System from one which would otherwise have been greater to that finally adopted. The consideration by the State Tax Commission of the method of capitalization of net income at 6 per cent, instead of working to the disadvantage of the plaintiff, worked to its great advantage and had the effect of materially lowering what would otherwise have been a higher assessment.

It is denied that the Revenue Commissioner made an assessment of the plaintiff's property for 1921 or used any method whatever in making such assessment. He merely carried forward the assessment which was made by the State Tax Commission for 1920 and which was approved and adopted as the assessment for the years 1920 to

1923 inclusive by the Extra Session of the General Assembly of 1920.

It is admitted that the plaintiff was in 1919, and is now, a separate corporate entity from the Southern Railway Company, but it is denied that it is separately operated. The defendants aver that the Southern Railway Company controls the plaintiff through ownership of the entire capital stock in the plaintiff corporation, and that the Southern Railway Company operates the plaintiff's railroad as a part of the Southern Railway System. The defendants further aver that the method of accounting within the Southern Railway System and the allocation of operating revenues and expenses to the plaintiff and to other railroads operated by the Southern Railway Company is done according to a method devised by the plaintiff and the Southern Railway Company themselves. It is denied that either the plaintiff or the Southern Railway Company, is prejudiced by an assessment together of the total properties of the Southern Railway System and the allocation to the plaintiff and other railroads operated as a part of that system of certain portions of that total assessment according to the methods of accounting and allocation devised by the Southern Railway Company itself, which allocation in fact gave to the plaintiff as the assessment of its total properties in North Carolina the exact figure suggested by the Tax Commissioner of the Southern Railway System to be taken as hereinbefore stated. The defendants further aver that if the said total assessment of the plaintiff's property were in any way in excess of the actual value of such property, this would result from the fact that other properties belonging to the Southern Railway System and to the same owner were underassessed and the difference added to the plaintiff's assessment by reason of the method of allocation suggested by the plaintiff itself and the Southern Railway Company. As showing that neither the plaintiff nor the Southern Railway Company is injured by the amount of such allocation to the plaintiff, reference is made to the said letter of the Tax Commissioner of the Southern Railway System of July 21, 1920, above referred to, wherein he suggested the distribution among the various companies of the Southern Railway System of the total assessment to North Carolina, and added:

"If you feel that any of these values are too high I would suggest that it would be entirely proper to give a further arbitrary increase to the North Carolina Midland and to the Atlantic and Yadkin in order to absorb any reduction on the double-track line. You understand, of course, that I am not wedded to this distribution and am making same only as a suggestion and for the purpose of affording you all possible assistance."

It is denied that the said assessment of the plaintiff's property was illegal, and it is denied that the said total assessment of all of the properties of the Southern Railway System was illegal or was an overassessment, as will appear from the answer filed by these defendants in the suit entitled "Southern Railway Company against A. D. Watts et al."

It is denied that in assessing the plaintiff's property either the Commissioner of Revenue or the State Tax Commission acted without warrant of law or to the plaintiff's damage, and it is denied that the said assessment is illegal and that the exaction of taxes based thereon deprived plaintiff of its property without due process of law contrary to the Fourteenth Amendment to the Constitution of the United States or the uniformity section of the North Carolina Constitution.

6. Answering the allegations of article six the defendants deny that the assessment of $4,104,710 is an overassessment of the plaintiff's property, or in excess of its true value for tax purposes, as defined by the laws of North Carolina.

(1) The defendants deny knowledge or information sufficient to form a belief as to the truth of the figures set out on page 12 of the complaint as to the operating results of the plaintiff for the last five-year period. They deny that the assessment of the plaintiff's property was arrived at merely by the method of capitalization of net income. It is denied that the Revenue Commissioner ever increased the plaintiff's assessment arbitrarily or otherwise. It is denied that the said assessment was ever increased because the plaintiff's property, together with the property of other companies, showed that there was a net income for all of them, the capitalization of which produced an increase of 107 8/10 per cent or any other per cent. The defendants aver that the State Tax Commission in determining the values of the property of the plaintiff and of the other railroads in the Southern Railway System used the various methods set forth in article five of the answer of these defendants in the said suit in this court entitled "Southern Railway Company v. A. D. Watts and others," and the defendants pray that the said article of said answer may be referred to and made a part of this answer as fully as if it were here copied.

(2) The defendants deny knowledge or information sufficient to form the belief as to the amount of the plaintiff's capital stock and bonded indebtedness, and as to what dividends have been paid or declared in recent years upon the capital stock. It is admitted that the plaintiff's stock and bonds have no such market value as would result in a fair assessment by merely calculating the value of the property by what is known as the stock-and-bond method, the defendants aver that the value of the property of the plaintiff subject to taxation in North Carolina is far in excess of the figure which would be arrived at by a mere use of the said stock-and-bond method alone, and particularly is far in excess of the value of $1,750,000, alleged by the plaintiff.

(3) The defendants deny knowledge or information sufficient to form a belief as to the figures for investment in road and equipment filed by the plaintiff with the Interstate Commerce Commission, but they admit that the plaintiff's said property account is not a proper criterion of the value of the plaintiff's property, and allege that its value for taxation is much in excess of the said figure. The

defendants show that the said investment account figures do not include any of the intangible property belonging to the plaintiff or inhering in its railroad lines. The defendants show that while the said investment accounts may represent approximately the value of the tangible or physical property of the plaintiff's lines, a great part of the value of the plaintiff's railroad results from the fact of its use and operation in connection with and as an integral part of the Southern Railway System and the enormously valuable property in that system; standing alone and as disconnected from the other properties in the Southern Railway System the physical or tangible property of the plaintiff would be worth far less than it actually is worth due to the intangible values which it has resulting from its connection and operation with the Southern Railway System. It is denied that the assessment complained of is unreasonable or excessive as alleged.

(4) Answering the allegations of article six, section (4), of the complaint as to the so-called tentative values of the Interstate Commerce Commission the defendants say that these figures are purely tentative and in no way final or binding. They are figures arrived — by the engineers of that Commission from an estimation of the value of property of the plaintiff and of the railroad based on an inventory as of June 30, 1916, and on prices prevailing June 30, 1914. The price level in general, and particularly the cost of railroad construction, have very much increased since 1914. As an illustration of this reference is made to the report of the Southern Railway Company to its stockholders for the year ending December 30, 1920, being its 25th annual report, and to page five thereof, wherein the Southern Railway Company reports that the work of laying a double track on a revised grade of that company's line between Washington and Atlanta had been finished; that, as originally contracted and estimated, this work was to cost $34,838,000, but that the actual cost of it was $52,134,000, or about 50 per cent greater. This latter sum represents the actual cost of construction of 625 miles of second track, the cost of laying which is less than that of laying first track, and shows that the said second track between Washington and Atlanta cost $82,884 a mile on an average. The year 1914, upon the price level of which the said tentative figures of the Interstate Commerce Commission are based, was actually a subnormal period as to prices with relation both to time before and time after the said year. Therefore, the said tentative figures in no way represent the actual cost of replacement of the tangible property of the plaintiff as of the date of 1920 and 1921.

In addition, these tentative figures do not include the intangible property of the plaintiff, consisting of the franchise to be a corporation, the franchise to do business as a corporation, the going-concern value, and the other intangible values resulting from the operation of the plaintiff's railroad as an integral part of the Southern Railway System as hereinbefore stated, all of which property values are subject to taxation in North Carolina.

To the said tentative figures the plaintiff, on page 13 of its com-

plaint, adds only an estimated value of real estate at $193,298, which is an estimate of its land by the plaintiff itself at a figure much lower than its actual value. It is denied that $2,886,570 is in any way the limit or measure of the value of the plaintiff's property for taxation in North Carolina.

It is admitted that the plaintiff does not concede that the valuation found by the Interstate Commerce Commission for rate-making purposes under the Interstate Commerce Act is the true value of its property for tax purposes as required by the Constitution and laws of North Carolina. On the other hand, defendants are informed and believe, and therefore allege, that the Southern Railway Company, and the plaintiff as a part of its system, appearing before the Interstate Commerce Commission for the purpose of securing higher rates, maintained that the value of its property in North Carolina was far greater than that shown by the said tentative figures; that about the time the said assessments now in question were made in North Carolina for taxation, the Southern Railway System, and the plaintiff as a part thereof, was contending before the Interstate Commerce Commission that that body should take as the value of the property of that system and of the plaintiff a figure higher than the plaintiff's investment account, and much higher than the figure which the plaintiff now contends to be its value in this suit in which it attacks North Carolina tax assessments as excessive.

It is denied that the said tentative values have any effect to prove that the assessment of the plaintiff's property is excessive, and it is denied that it is necessary to recognize the said tentative values in order to prevent discrimination as between the several railroads in this State. It is denied that the true value of the plaintiff's property for tax purposes under the laws of North Carolina is less than the total value arrived at by the said tentative figures. It is denied that any amount of illegal taxes will be required to be paid by the plaintiff, and that it will pay any excessive tax unless the collection thereof be restrained or otherwise.

(5) It is denied that the fact that the test period used under the Federal Control Act to determine the standard returns to railroads showed an annual deficit for the plaintiff has any effect to prove that the assessment of the plaintiff's property for taxation is excessive and illegal. That test period was one of sharp depression, and was, therefore, not a reflection of the earnings of the plaintiff that may be expected under normal conditions, and when the provisions of the amended Interstate Commerce Act with respect to rate and earnings become effective, nor was it a reflection of the actual value of the plaintiff's property.

(6) The allegations of article six, section (6) of the complaint are denied, and the defendants aver that the plaintiff's property has an intangible or a franchise value, and that the assessment of the plaintiff's property, tangible and intangible, was based on an abundance of evidence. It is denied that the said assessment violates section three of article five of the Constitution of North Carolina, and it is denied that to exact taxes thereon would deprive plaintiff of its

property without due process of law or would violate the Fourteenth Amendment to the Constitution of the United States.

(7) The allegations of article six, section (7) of the complaint are admitted, but the defendants aver that there were no just grounds for protest against the tax paid by the plaintiff in 1920.

(8) Section 28 (*a*) of the Machinery Act of 1921 is admitted to be correctly quoted in article six, section (8) of the complaint. It is admitted that the county boards of review of the counties through which the plaintiff operates made the reductions in the assessed value of real property in general in their respective counties in the percentages set out in the table on page 17 of the complaint, reported the same to the State Board of Equalization, and that the assessments so reduced were not revised or changed by that board and therefore became effective.

It is denied that the assessment for 1920 as to railroads was in excess of true value. The defendants aver, however, that the assessment for 1920 of real property in general, other than railroad property devoted to purposes of transportation, was in fact in excess of true value for 1921; that the assessments of the property of the plaintiff devoted to transportation, and that of other railroads in the State, for 1920, were already at their true value, and that the failure of the Commissioner of Revenue to make similar reductions of the assessment of the plaintiff's railroad property resulted in no discrimination and in violation neither of the Constitution of North Carolina nor of the Constitution of the United States.

Furthermore, it is denied that the Commissioner of Revenue declined to consider or to give to the plaintiff the benefit of any similar reductions in the said counties; the defendants aver that although such reductions were not applied to the right of way, land and structures thereon, that is to strictly railroad property of the plaintiff, they were applied to the property of the plaintiff lying off the right of way exactly as they were applied to other real property in general, and that there was no discriminative violation by the Commissioner of Revenue of Section 3 of Article V of the Constitution of North Carolina, and no violation of the Fourteenth Amendment of the Constitution of the United States.

The defendants deny knowledge or information sufficient to form a belief as to what the amount of tax of the plaintiff for 1921 will be, but it is denied that the said tax will be discriminatory against the plaintiff as compared with other taxpayers, and the defendants aver that taxes against all taxpayers in general in the State will be considerably increased for 1921 by reason of the necessity of raising revenue to finance the enlarged programs for public improvements and for public schools in the State. The defendants further aver that the actual total amount of taxes paid by the plaintiff in 1920 in and to the State of North Carolina and the subdivisions thereof was much less than the total amount paid by it in 1919 before the enactment of the Revaluation Act and the revaluation made thereunder.

Further answering, the defendants refer to paragraphs four to

nine, inclusive, of article eight of their answer to the complaint of the Southern Railway Company in the case in this court entitled "Southern Railway Company v. A. D. Watts et al.," and pray that the said paragraphs be taken as part of this answer, as fully as if they and each of them were here copied.

The following table gives, as an illustration of the fact that the valuation of the plaintiff's property for 1920 was by no means so great a proportionate increase over the assessment for 1919 as were the corresponding increases of the assessment of real property in general even after the allowance of the reductions therein made pursuant to the Act of 1921, the figures for the counties in which are located property of the plaintiff of the assessments of which it now complains. The table shows the assessment of real property in each county for 1919, the percentage reduction allowed upon the 1920 assessment, and the assessment for 1920 as reduced by that percentage or the assesment as it is for 1921:

County.	1919.	Reduction.	1920, less reduction (1921).
Chatham	$4,082,437	None	$11,813,037
Forsyth	14,234,803	None	72,197,173
Guilford	18,884,912	None	85,158,132
Lee	2,735,578	33⅓	5,803,313
Randolph	5,390,639	33⅓	12,312,203
Rockingham	8,399,673	25	35,860,033
Stokes	2,618,965	33⅓	7,248,774
Surry	5,796,250	25	13,896,709

The defendants further pray that reference be had to Exhibit "A" attached to their answer to the complaint of the Southern Railway in suit above referred to, and be made a part of this answer, to show that on an average real property in general in the State was raised three times the assessment for 1919 when reassessed under the Revaluation Act for 1920.

(9) Answering the allegations of article six, section (9) of the complaint, the defendants refer to article nine of their answer to the complaint of the Southern Railway Company in the suit above referred to, and pray that the said article be taken as a part of this answer as fully as if it were here copied.

(10) It is denied that the values of the property of plaintiff depend upon the fluctuating values of other property in the State as affected by temporary advances and declines. It is denied that the business of the plaintiff fluctuates directly or in any corresponding proportion with the values of farm lands, other real property, or the prosperity of the State it serves for any one year or temporary period of time. It is denied that the plaintiff's property has decreased in value in 1921. Although the value of the use of the plaintiff's property may have been temporarily depressed, this is only a temporary condition, and there has been no corresponding depression in the value of the plaintiff's permanent property, and the plaintiff is entitled to no reduction in its taxable values, and the failure to make

such reduction is denied to be discrimination or contrary either to the uniformity clause of the Constitution of North Carolina or to the Fourteenth Amendment to the Constitution of the United States.

The defendants further aver that the assessed values of real estate in general, especially farm lands, had been raised under the revaluation in some instances from 300 to 500 per cent. As hereinbefore stated, such real property was raised in valuation about three times on an average. The plaintiff's railroad property assessment was only about doubled, however. After allowing the reductions made in many counties pursuant to the Act of 1921 it still is the fact that real property generally stands at an increased value very much greater in comparison than the increased value assessed on the plaintiff's property. It is impossible, therefore, that there is any discrimination against the plaintiff. As showing this reference is made to the table set forth in paragraph (8) of this article of this answer, and to Exhibit "A" attached hereto and to the answer of these defendants to the complaint of the Southern Railway Company in the suit brought by that company above referred to.

Moreover, the plaintiff's passenger and freight rates were raised respectively 20 and 25 per cent at the very time when farmers, far from enjoying increased prices for their products, were actually suffering disastrous losses, due to the fact that the selling prices of products of land had so suddenly and violently decreased that such products failed to bring enough return nearly to pay the cost of production. The values of farm lands sank sharply with the prices of the products of such land, and their decline furnishes no analogy from which the conclusion can be drawn that values of railroad properties declined and the assessments thereof should be reduced. The defendants aver that at any time when it is not making a return on its investment the plaintiff may apply to the Interstate Commerce Commission for an increase of rates, but farmers and landowners have no such forum in which they may seek a remedy to relieve them against the disastrous losses which they have suffered, due to depressed prices of farm products.

(11) Answering the allegations of article six, section (11) of the complaint, the defendants refer to article eleven of their answer to the complaint of the Southern Railway Company in the suit above referred to, and pray that the said article be taken as a part of this answer, with the exception that the petition of the plaintiff to the Commissioner of Revenue for a review of the 1920 assessment was made through the plaintiff's owner, the Southern Railway Company, and it was represented in the said hearing by its said owner.

(12) Answering the allegations of article six, section (12) of the complaint, the defendants refer to article twelve of their answer to the complaint of the Southern Railway Company in the suit above referred to, and pray that the said article be taken as a part of this answer as fully as if it were here copied.

(12½) Answering the allegations of article six, section (12½), the same being an amendment to the complaint, the defendants

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refer to article twelve and a half of their answer to the complaint of the Southern Railway Company in the suit above referred to, and pray that the said article be taken as part of this answer as fully as if it were here copied.

(13) The allegations of article six, section (13) of the complaint are denied. The defendants allege that it is perfectly competent for the State of North Carolina, after taxing the property of the plaintiff ad valorem, to levy upon the plaintiff an additional tax for the privilege of engaging in intrastate commerce in this State and an additional income tax of three per cent on its net income, which said income tax is levied equally upon all other corporations without discrimination.

(14) The allegations of article six, section (14) of the complaint are denied.

(15) It is admitted that the plaintiff will owe to the State, counties and municipalities the legally enacted tax upon whatever may be found to be the legal assessment of its property for taxes in the State of North Carolina, and the defendants aver that the said legal assessment is that fixed for 1920 to 1923, inclusive, and as approved by the General Assembly and adopted for those years.

(16) Answering the allegations of article five, section (16) of the complaint, it is denied that the said assessment is illegal, and it is denied that this suit is brought to avoid a multiplicity of suits. It is denied that the said assessment is invalid; it is denied that unless the tax-collecting officers of the several counties and municipalities are restrained, they will proceed to collect any illegal tax upon any illegal assessment. On the other hand, the defendants aver that the taxes which the said officers will proceed to collect are valid and lawful; that they of right will become a first lien upon the property of the plaintiff in North Carolina if not paid as is the case with taxes upon all real property; it is denied that the said rightful lien will constitute a cloud upon the title to the said property against which equity should grant relief; it is denied that the plaintiff will be damaged by the remedies for collection of the said lawful and valid taxes, and it is denied that the plaintiff has no adequate remedy at law.

Prayer.

Wherefore, having fully answered the complaint filed in this suit, the defendants pray the court that every and singular the prayers of the said complaint be denied, and that the same be dismissed at the costs of the plaintiff.

JAS. S. MANNING,
Attorney-General of North Carolina;
FRANK NASH,
Assistant Attorney-General of North Carolina,
Solicitors for the Defendant.

WM. P. BYNUM,
GEO. H. BROWN,
LOCKE CRAIG,
THOS. D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel.

A. D. Watts, being duly sworn, says that he is one of the defendants in the above-entitled suit; that he has read the foregoing answer to the complaint, and that it is true of his own knowledge, except as to matters therein stated on information and belief, and as to them he believes it to be true.

A. D. WATTS.

Sworn to and subscribed before me this 11th day of November, 1921.

W. P. STACY,
Associate Justice N. C. Supreme Court.

EXHIBIT "A"

Comparative Statement of Taxable Values for the Years 1919 and 1920, Showing Number of Acres of Land, Value of Timber, Manufacturing, Mineral and Quarry Properties, Average Value Per Acre, Value of Town Lots, Value of Real Estate, Value of Personal Property, and the Aggregate Value of Real and Personal Property Listed With County Supervisors. (Note.—This Statement Does Not Include Railroad and Public Service Corporations, Banks, and Corporate Excess Assessed by the State Tax Commission.)

Counties	No. Acres Land	Value of Land, Timber Manufacturing Properties, Mineral and Quarry	Average Value Per Acre	Value of Town Lots	Total Value of Real Estate	Total Value of Personal Property	Aggregate Value of Real and Personal Property
Alamance, 1919	257,742	$ 2,786,845	$ 10.81	$ 2,058,055	$ 6,844,638	$ 5,522,968	$ 11,377,606
Alamance, 1920	282,836	9,966,036	37.92	7,159,464	24,934,832	10,537,710	35,472,542
Alexander, 1919	157,970	1,283,419	8.12	194,050	1,667,975	1,615,101	3,283,076
Alexander, 1920	165,761	4,864,835	29.30	681,423	6,527,000	1,958,286	8,485,286
Alleghany, 1919	143,309	957,833	6.68	28,343	996,054	940,622	1,936,676
Alleghany, 1920	147,001	5,383,189	36.62	83,210	5,383,189	1,465,520	6,848,709
Anson, 1919	328,634	2,663,406	8.11	964,030	4,379,115	2,781,961	9,161,076
Anson, 1920	329,715	10,529,114	31.93	2,855,697	13,384,811	6,821,284	20,216,095
Ashe, 1919	268,508	2,094,573	7.80	73,833	2,172,551	2,555,766	4,728,317
Ashe, 1920	272,678	12,360,480	45.33	322,432	12,731,463	3,917,513	16,648,976
Avery, 1919	113,053	1,059,508	9.37	128,961	1,571,789	672,046	2,243,835
Avery, 1920	130,932	3,863,827	29.51	308,197	4,793,754	1,133,923	5,927,683
Beaufort, 1919	379,913	3,422,611	9.00	2,534,192	8,385,173	4,231,976	12,567,149
Beaufort, 1920	398,759	24,325,213	61.31	4,238,253	29,207,006	8,462,799	37,669,805
Bertie, 1919	450,883	3,040,339	6.76	882,130	4,055,850	3,467,857	7,523,746
Bertie, 1920	460,557	9,629,044	24.00	2,259,976	13,958,782	5,301,677	19,260,459
Bladen, 1919	502,723	2,655,945	5.28	287,732	3,545,259	2,250,967	5,796,226
Bladen, 1920	534,585	10,092,338	19.24	794,790	11,630,040	3,418,325	15,048,365

Brunswick, 1919	476,230	2,406,553	5.05	490,048	2,896,600	1,640,498	4,537,098
Brunswick, 1920	502,893	5,477,845	10.90	970,035	7,953,027	2,617,305	9,570,332
Buncombe, 1919	312,643	6,664,587	21.32	13,484,771	21,862,308	9,232,489	31,094,797
Buncombe, 1920	.....	.....	.....	.....	60,319,591	17,442,518	77,762,109
Burke, 1919	297,084	2,445,419	8.23	883,211	3,651,492	2,318,258	5,969,750
Burke, 1920	316,304	7,164,477	22.65	1,932,615	11,047,773	4,793,304	15,841,076
Cabarrus, 1919	208,079	2,213,175	10.64	1,734,076	6,729,195	5,406,793	12,135,988
Cabarrus, 1920	222,038	9,964,995	44.88	6,185,440	30,211,743	15,069,837	45,281,580
Caldwell, 1919	227,055	1,809,693	7.97	660,221	3,802,721	2,142,059	5,944,780
Caldwell, 1920	258,296	7,792,632	30.17	2,896,422	13,257,243	4,456,030	17,713,273
Camden, 1919	145,857	1,083,289	7.42	58,807	1,298,061	672,229	1,970,290
Camden, 1920	149,262	3,587,989	24.04	121,547	3,736,356	846,591	4,582,947
Carteret, 1919	239,554	1,703,631	7.11	1,056,084	2,995,060	1,580,379	4,579,439
Carteret, 1920	233,162	7,972,149	34.19	1,650,790	10,405,239	2,940,095	13,345,434
Caswell, 1919	262,748	1,686,517	6.42	116,680	1,869,197	2,188,466	3,991,663
Caswell, 1920	268,746	8,743,808	32.54	209,340	9,053,148	2,920,697	11,973,845
Catawba, 1919	256,932	2,460,000	9.58	1,604,330	4,692,916	5,370,515	10,063,431
Catawba, 1920	254,423	12,339,006	48.50	7,735,670	26,677,188	9,357,453	36,034,641
Chatham, 1919	404,913	3,063,242	7.04	504,565	4,062,437	3,551,644	7,644,081
Chatham, 1920	435,773	10,063,238	23.09	1,243,459	11,813,037	4,594,017	16,407,054
Cherokee, 1919	273,738	2,115,327	7.42	717,719	2,833,046	1,690,555	4,523,601
Cherokee, 1920	303,762	3,045,638	10.03	871,876	4,264,124	2,331,748	6,595,872
Chowan, 1919	99,967	1,159,788	11.60	582,677	2,007,621	1,775,608	3,783,229
Chowan, 1920	110,499	4,410,953	39.92	2,412,177	6,823,130	3,594,041	10,417,171
Clay, 1919	126,778	743,216	5.86	22,361	808,427	425,462	1,233,889
Clay, 1920	170,813	2,106,635	12.33	47,580	2,154,215	693,421	2,847,636
Cleveland, 1919	278,305	3,827,884	13.75	1,520,971	7,574,843	4,909,563	12,484,406
Cleveland, 1920	277,843	16,422,057	59.11	4,554,698	28,168,738	11,168,258	39,337,062
Columbus, 1919	458,631	3,429,046	7.48	822,207	4,922,220	4,061,355	8,983,575
Columbus, 1920	.....	.....	.....	.....	15,789,229	6,600,009	22,389,229
Craven, 1919	364,212	2,421,364	6.65	4,354,543	7,617,226	4,097,447	11,714,673
Craven, 1920	323,112	15,488,629	47.94	13,256,829	28,745,458	9,352,494	38,097,952
Cumberland, 1919	238,497	3,116,070	9.21	2,513,375	6,848,011	4,990,251	11,838,262
Cumberland, 1920	358,317	12,835,535	35.82	7,393,804	20,822,630	7,567,734	28,090,773
Currituck, 1919	148,426	1,513,584	10.20	.....	1,733,291	705,677	2,438,968
Currituck, 1920	125,080	4,541,124	36.30	.....	4,541,124	1,033,871	5,574,995
Dare, 1919	208,400	494,819	2.37	100,929	626,963	301,642	928,605
Dare, 1920	.....	.....	.....	.....	2,282,743	593,808	2,876,551
Davidson, 1919	35,442	.....	.....	.....	6,997,305	3,806,554	10,763,859
Davidson, 1920	255,066	15,295,783	.....	6,611,775	30,638,102	9,691,905	40,330,005
Davie, 1919	160,640	1,529,050	9.52	358,539	2,294,489	3,043,548	5,338,017
Davie, 1920	182,796	7,234,899	44.00	2,753,491	9,978,390	3,939,443	13,917,833
Duplin, 1919	449,760	3,689,316	8.20	850,138	4,723,287	4,976,607	9,699,894

COMPARATIVE STATEMENT OF TAXABLE VALUES FOR THE YEARS 1919 AND 1920—Continued.

Counties	No. Acres Land	Value of Land, Timber, Manufacturing Properties, Mineral and Quarry	Average Value Per Acre	Value of Town Lots	Total Value of Real Estate	Total Value of Personal Property	Aggregate Value of Real and Personal Property
Duplin, 1920	457,270	$ 23,071,185	$ 50.45	$ 1,100,364	$ 24,211,549	$ 7,285,518	$ 31,497,067
Durham, 1919	178,534	3,580,252	19.99	8,021,399	14,777,121	20,806,813	35,583,934
Durham, 1920	182,606	9,530,019	52.19	19,560,602	43,426,847	66,651,182	110,078,029
Edgecombe, 1919	303,562	4,131,420	13.60	3,056,247	7,867,565	7,415,180	15,282,745
Edgecombe, 1920	309,497	24,897,646	80.44	10,054,910	34,955,056	10,256,906	45,211,962
Forsyth, 1919	230,680	2,871,776	12.45	9,548,925	14,234,803	22,223,157	36,457,960
Forsyth, 1920	237,190	13,961,294	58.86	21,757,422	72,197,173	64,402,548	136,599,721
Franklin, 1919	303,215	3,082,712	10.16	1,482,479	4,607,194	4,565,498	9,172,692
Franklin, 1920	301,008	14,667,266	48.73	1,927,314	16,594,580	6,167,709	22,762,367
Gaston, 1919	201,263	2,648,515	13.16	2,807,246	11,302,306	8,192,856	19,495,172
Gaston, 1920	211,528	14,233,409	67.29	11,767,733	52,344,286	22,745,959	75,090,248
Gates, 1919	196,651	1,830,440	9.31	136,799	1,985,648	1,433,647	3,420,295
Gates, 1920	158,145	5,250,857	33.20	226,225	5,631,242	1,663,562	7,294,804
Graham, 1919	177,414	984,505	5.55	28,350	2,132,968	599,954	2,732,942
Graham, 1920	195,803	2,106,480	10.76	46,350	4,969,726	1,337,240	6,306,976
Granville, 1919	319,516	2,839,542	8.88	1,267,066	4,324,621	4,571,084	8,895,705
Granville, 1920	334,774	9,515,391	28.20	3,463,640	16,068,145	6,775,835	22,894,030
Greene, 1919	159,389	1,946,611	12.21	295,283	2,250,882	3,391,246	5,642,128
Greene, 1920	159,276	13,358,939	83.87	984,687	14,343,626	5,666,468	20,010,092
Guilford, 1919	393,239	6,646,810	16.90	9,183,654	18,884,912	12,058,586	30,943,498
Guilford, 1920	394,318	20,889,651	52.98	22,906,580	85,158,132	30,894,441	116,052,573
Halifax, 1919	409,577	4,404,845	10.75	2,349,656	8,675,643	10,385,714	19,061,357
Halifax, 1920	425,386	16,359,967	38.22	6,436,375	35,636,872	12,536,567	48,173,439
Harnett, 1919	353,154	3,077,468	8.65	740,537	4,742,589	5,425,881	10,168,771
Harnett, 1920	346,418	14,418,178	41.62	3,514,044	20,823,234	8,165,342	28,988,576
Haywood, 1919	321,154	3,037,607	9.45	1,779,567	6,120,975	2,762,717	8,883,692
Haywood, 1920	343,881	10,960,771	31.87	4,024,593	17,326,364	6,080,935	23,407,299
Henderson, 1919	199,895	2,150,723	10.86	1,862,495	4,173,152	1,881,099	6,054,251
Henderson, 1920	195,716	4,689,786	23.00	3,796,873	11,322,157	3,101,037	14,423,194
Hertford, 1919	204,576	2,118,831	10.36	629,451	2,840,986	3,090,703	5,931,689
Hertford, 1920	201,537	8,738,122	43.36	1,991,046	10,747,168	3,909,665	14,656,833

Hoke, 1919	224,703	2,129,767	9.48	300,364	2,653,091	2,020,935	4,574,026
Hoke, 1920	221,220	9,967,460	45.05	944,313	11,344,263	2,995,910	14,340,173
Hyde, 1919	275,961	1,540,190	5.58	40,220	1,619,250	1,071,108	2,690,358
Hyde, 1920	420,604	11,237,110	28.14	443,911	12,281,021	2,035,801	14,316,823
Iredell, 1919	363,920	3,754,812	10.32	2,726,620	7,376,308	6,785,263	14,161,571
Iredell, 1920	364,307	15,358,713	42.63	6,728,014	26,500,459	10,117,767	36,618,226
Jackson, 1919	291,748	1,553,849	5.33	188,013	2,168,634	1,993,645	4,162,280
Jackson, 1920	319,180	6,068,768	19.01	222,843	6,608,611	3,149,193	9,757,804
Johnston, 1919	481,734	5,092,429	10.57	1,973,354	7,912,383	10,322,128	18,234,511
Johnston, 1920	498,946	32,020,897	65.38	7,092,972	42,030,148	15,477,315	57,507,463
Jones, 1919	201,477	1,666,956	8.72	260,788	1,969,921	1,378,496	3,348,417
Jones, 1920	294,534	7,585,777	25.75	712,063	8,447,840	2,255,143	10,702,983
Lee, 1919	155,723	1,467,390	9.42	926,313	2,735,378	2,144,202	4,879,580
Lee, 1920	163,139	6,712,608	41.15	1,019,619	8,706,469	3,371,944	12,078,413
Lenoir, 1919	222,375	2,305,289	9.92	2,320,826	4,859,933	5,518,123	10,378,056
Lenoir, 1920	239,868	20,753,505	86.52	11,629,585	32,857,010	10,910,400	44,767,410
Lincoln, 1919	179,228	2,119,195	11.82	586,071	3,446,982	4,256,437	7,703,419
Lincoln, 1920	193,391	7,804,532	38.80	2,000,709	12,484,088	5,417,219	18,901,307
Macon, 1919	260,925	1,490,137	5.71	406,713	2,006,353	1,293,125	3,299,478
Macon, 1920	275,716	5,011,838	18.18	189,631	5,201,469	1,330,969	6,532,438
Madison, 1919	262,922	2,108,634	8.02	302,267	3,241,392	2,617,167	5,858,559
Madison, 1920	278,933	7,578,333	27.16	791,445	8,367,778	2,775,922	11,143,700
Martin, 1919	267,953	2,966,812	11.13	941,390	4,116,229	4,768,842	8,885,071
Martin, 1920	287,276	12,848,746	44.72	2,500,065	15,613,311	6,799,760	22,413,071
McDowell, 1919	254,751	----------	----	----------	2,675,963	1,042,156	3,718,119
McDowell, 1920	241,210	2,814,834	11.67	1,540,981	8,136,746	3,861,589	12,001,335
Mecklenburg, 1919	313,806	4,032,705	12.85	12,112,770	22,133,825	15,983,964	38,217,899
Mecklenburg, 1920	314,277	14,423,866	67.31	56,054,830	93,500,878	33,585,455	127,086,533
Mitchell, 1919	128,935	718,301	5.57	76,756	795,057	650,049	1,445,106
Mitchell, 1920	138,372	4,027,771	29.11	278,203	4,340,208	1,133,117	5,473,325
Montgomery, 1919	288,986	1,766,533	6.11	629,643	2,858,539	2,478,702	5,337,241
Montgomery, 1920	289,109	5,090,834	17.60	1,738,731	6,830,165	3,091,370	9,921,535
Moore, 1919	415,165	3,178,355	7.65	1,671,452	5,434,221	3,005,237	8,439,458
Moore, 1920	401,486	8,004,405	19.93	5,240,261	15,604,749	5,224,372	20,829,121
Nash, 1919	335,415	3,878,799	11.50	3,219,117	7,985,680	8,201,768	16,287,448
Nash, 1920	333,886	20,867,100	67.82	9,818,482	36,300,096	12,130,528	48,430,624
New Hanover, 1919	92,962	2,100,440	22.59	10,087,380	14,941,453	5,406,709	20,348,162
New Hanover, 1920	114,132	3,171,511	28.05	14,399,066	37,517,377	12,528,021	50,045,398
Northampton, 1919	318,278	3,795,130	11.64	623,790	4,463,235	4,436,914	8,900,149
Northampton, 1920	331,152	11,257,234	33.99	1,110,300	12,367,534	4,772,232	17,139,766
Onslow, 1919	342,132	2,846,648	8.32	489,741	4,772,360	2,651,357	7,423,717
Onslow, 1920	416,856	7,308,697	20.60	992,585	10,807,997	2,780,647	13,584,644
Orange, 1919	241,018	1,951,878	7.78	1,051,230	3,916,209	3,078,757	6,994,966

COMPARATIVE STATEMENT OF TAXABLE VALUES FOR THE YEARS 1919 AND 1920—Continued.

Counties	No. Acres Land	Value of Land, Timber, Manufacturing Properties, Mineral and Quarry	Average Value Per Acre	Value of Town Lots	Total Value of Real Estate	Total Value of Personal Property	Aggregate Value of Real and Personal Property
Orange, 1920	244,404	$ 7,966,281	$ 32.19	$ 2,210,764	$ 10,086,045	$ 6,222,234	$ 16,308,279
Pamlico, 1919	197,344	1,291,248	6.51	217,598	1,519,204	832,713	2,351,917
Pamlico, 1920	190,034	4,008,284	21.09	457,130	5,546,213	1,410,210	6,956,423
Pasquotank, 1919	148,427	1,678,547	11.31	2,136,000	4,120,322	2,922,259	7,042,581
Pasquotank, 1920	137,882	5,010,537	33.04	2,984,095	13,421,447	5,980,231	19,401,678
Pender, 1919	309,026	1,801,116	5.83	241,571	2,210,798	1,616,117	3,825,915
Pender, 1920	451,802	7,307,962	16.17	632,713	8,492,796	2,019,023	10,511,821
Perquimans, 1919	151,630	1,431,991	9.44	473,929	2,000,948	1,984,783	3,985,851
Perquimans, 1920	135,126	4,579,533	33.89	1,035,330	5,739,409	2,359,005	8,098,714
Person, 1919	243,726	1,907,348	7.67	491,389	2,033,089	2,368,906	5,001,575
Person, 1920	254,630	10,087,660	39.65	1,751,538	12,482,278	3,934,517	16,070,796
Pitt, 1919	377,008	4,286,655	11.64	2,896,942	7,464,487	8,955,875	16,120,362
Pitt, 1920	393,113	1,031,414	87.54	10,810,632	44,254,806	17,617,301	61,871,989
Polk, 1919	131,161	1,031,414	7.86	630,604	1,662,018	759,328	2,421,346
Polk, 1920	130,938	3,221,221	24.61	402,878	3,943,541	3,991,363	8,734,904
Randolph, 1919	460,446	3,426,965	7.61	1,189,536	5,390,630	4,514,894	9,905,533
Randolph, 1920	489,717	13,353,406	27.27	2,943,531	18,468,305	7,049,522	25,517,827
Richmond, 1919	271,827	1,733,510	6.39	1,810,266	5,047,210	3,401,553	8,448,763
Richmond, 1920	298,185	8,335,941	28.62	2,335,127	13,450,380	5,009,023	18,459,413
Robeson, 1919	508,290	5,661,490	11.14	2,330,989	9,043,675	8,063,294	17,106,969
Robeson, 1920	544,258	41,507,181	76.23	3,410,236	48,024,889	16,401,672	64,426,611
Rockingham, 1919	345,078	3,313,287	9.08	2,215,162	5,390,673	7,917,904	16,317,477
Rockingham, 1920	354,743	20,502,620	57.79	17,139,898	47,813,378	24,561,966	72,375,344
Rowan, 1919	315,694	3,506,437	11.11	4,975,488	9,727,045	6,753,857	16,480,922
Rowan, 1920	319,701	14,383,945	46.00	14,702,488	38,548,806	8,802,070	47,350,876
Rutherford, 1919	323,305	3,660,930	5.23	535,344	4,221,111	3,304,275	7,525,386
Rutherford, 1920	336,899	12,980,438	39.33	717,300	19,912,643	8,234,619	28,727,261
Sampson, 1919	530,046	3,850,892	7.26	678,881	4,529,773	4,864,205	9,403,983
Sampson, 1920	578,092	16,169,472	28.00	2,161,205	22,717,980	9,305,331	32,023,340
Scotland, 1919	190,468	2,194,492	11.52	705,652	3,661,128	3,732,179	6,393,317
Scotland, 1920	190,381	15,478,176	81.30	3,830,521	21,319,716	7,693,755	29,013,471

Stanly, 1919	228,929	1,794,885	7.84	1,109,296	4,727,603	2,962,460	8,711,172
Stanly, 1920	245,668	10,574,057	43.04	3,745,636	21,225,000	10,606,893	31,832,893
Stokes, 1919	274,915	2,364,379	8.60	212,216	2,618,945	3,512,301	6,131,246
Stokes, 1920	298,734	10,328,827	34.62	544,334	10,873,161	4,310,585	15,183,746
Surry, 1919	330,406	3,850,503	11.65	1,737,885	5,796,250	5,375,888	11,172,138
Surry, 1920	347,849	13,476,044	38.72	5,053,375	18,529,419	7,845,186	26,374,605
Swain, 1919	346,039	2,275,531	6.56	348,794	2,657,925	1,908,527	4,566,452
Swain, 1920	346,196	6,057,460	17.49	596,960	6,830,920	2,619,045	9,449,965
Transylvania, 1919	197,595	1,518,091	7.68	382,964	2,044,250	1,308,115	3,352,365
Transylvania, 1920	198,554	4,684,341	23.59	462,625	5,304,466	2,597,049	7,901,515
Tyrrell, 1919	192,927	974,680	5.05	117,342	1,105,114	645,502	1,750,616
Tyrrell, 1920	169,491	2,917,151	17.21	235,845	3,152,996	1,069,834	4,222,830
Union, 1919	389,203	2,975,210	7.65	1,714,833	5,092,979	6,205,125	11,298,104
Union, 1920	392,429	15,605,830	39.77	4,671,356	21,444,971	10,172,675	31,617,646
Vance, 1919	161,724	2,103,131	13.00	1,776,205	4,550,421	5,579,165	10,121,586
Vance, 1920	167,208	9,428,756	56.39	5,553,505	17,856,566	8,662,725	26,519,291
Wake, 1919	531,678	5,708,809	10.73	11,038,122	19,342,872	12,302,850	31,645,722
Wake, 1920	506,877	23,181,356	45.73	25,987,726	53,739,585	18,726,589	73,900,221
Warren, 1919	255,618	2,568,511	10.49	875,602	3,556,222	3,828,467	7,384,689
Warren, 1920	277,193	10,277,899	36.89	1,926,632	12,373,446	4,851,406	17,224,852
Washington, 1919	200,868	1,586,729	7.90	501,589	2,180,780	1,556,516	3,737,296
Washington, 1920	136,375	6,118,254	26.88	1,010,540	7,468,873	2,231,456	9,700,329
Watauga, 1919	207,881	1,632,908	7.85	140,420	1,773,418	1,938,899	3,712,317
Watauga, 1920	217,097	6,750,358	31.09	501,234	8,820,897	2,449,708	11,240,606
Wayne, 1919	340,735	3,771,064	11.07	4,026,567	8,449,151	9,173,853	17,623,004
Wayne, 1920	339,270	27,607,644	81.37	14,860,093	47,323,132	17,666,582	64,989,714
Wilkes, 1919	467,528	2,991,286	6.40	668,155	3,780,058	3,014,511	6,794,569
Wilkes, 1920	469,130	7,909,140	17.05	880,767	12,352,003	4,357,959	16,709,962
Wilson, 1919	223,631	2,866,661	12.82	3,109,243	6,333,509	9,005,000	15,338,509
Wilson, 1920	236,077	26,715,771	113.17	13,685,529	40,401,300	20,069,542	60,470,842
Yadkin, 1919	211,977	1,999,300	9.43	218,745	2,233,845	1,926,589	4,160,434
Yadkin, 1920	212,459	8,992,113	42.32	659,503	9,651,616	2,772,947	12,424,563
Yancey, 1919	174,935	1,142,880	6.53	83,079	1,335,074	1,204,819	2,539,893
Yancey, 1920	184,300	6,981,404	37.88	126,724	7,144,065	2,583,189	9,727,254

[Endorsed:] File No. 28,883. Supreme Court U. S., October Term, 1922. Term No. 369. Atlantic & Yadkin Railway Company Appellant, vs. A. D. Watts et al. Stipulation and addition to record. Filed October 4, 1922.

(7385)

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1922

No. [redacted]881

SEABOARD AIR LINE RAILWAY COMPANY, APPELLANT,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE OF THE STATE OF NORTH CAROLINA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

FILED MAY 8, 1923.

(26,215)

(28,915)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 960.

SEABOARD AIR LINE RAILWAY COMPANY, APPELLANT,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE OF THE STATE OF NORTH CAROLINA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

INDEX.

	Original.	Print.
Prosecution bond	2	1
Bill of complaint	3	2
Service of complaint	34	22
Stipulation as to service	35	23
Subpœna and marshal's return on same	36	24
Clerk's certificate as to service	37	25
Application for interlocutory injunction	38	25
Notice of hearing	40	27
Service of notice of hearing	42	28
Order on application for interlocutory injunction	43	28
Stipulation of counsel and interlocutory order	44	29
Motion to dismiss	47	31
Order continuing motion to dismiss	48	32
Answer	49	33
Exhibit A—Comparative statement of taxable values	71	49
Affidavit of W. L. Stanley	74	56
Affidavit of H. W. Mackenzie	83	62

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 25, 1922.

	Original.	Print.
Additional affidavit of H. W. Mackenzie	90	63
Affidavit of Geo. M. Phifer	91	64
Affidavit of C. J. O'Brien	106	66
Order for filing affidavit of members of former tax commission.	110	71
Affidavit of members of former tax commission	111	71
Report of State Tax Commission on revaluation	118	76
Opinion *per curiam*	129	95
Order denying interlocutory injunction	133	98
Notice of application for appeal and stay of proceedings	134	99
Assignment of errors	135	100
Order continuing hearing of application for appeal and stay	139	103
Order denying stay	140	104
Stipulation of counsel as to record	141	105
Memorandum of original papers certified separately	142	106
Order to transmit record	143	106
Clerk's certificate	144	107
Application for appeal and stay	145	107
Order allowing appeal	148	109
Bond on appeal	150	110
Citation and service	152	111

1 TRANSCRIPT OF RECORD.

In the District Court of the United States for the Eastern District of North Carolina.

At a District Court of the United States for the Eastern District of North Carolina begun and held at the court house, in the city of Raleigh, on the first Monday of March, being the sixth day of the same month, in the year of our Lord one thousand nine hundred and twenty-two.

Present: The Honorable Henry G. Connor, Judge of the District Court for the Eastern District of North Carolina.

Among others were the following proceedings, to-wit:

In Equity.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina, and Others.

2 *Prosecution Bond.*

Filed Nov. 29, 1921.

In the District Court of the United States for the Eastern District of North Carolina, at Raleigh.

In Equity.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

AUGUSTUS D. WATTS, Commissioner of Revenue of North Carolina; Benjamin R. Lacy, State Treasurer of North Carolina; Baxter Durham, State Auditor of North Carolina; James S. Manning, Attorney General of North Carolina, et al., Defendants.

Prosecution Bond.

Know all men by these presents, that we, Seaboard Air Line Railway Company, as principal, and Royal Indemnity Company, as surety, are held and firmly bound unto the defendants in the above entitled action in the sum of Two Hundred Dollars ($200.00), to the payment of which we bind ourselves firmly by these presents.

Sealed with our seals and dated this 29th day of November, 1921.

The condition of the above obligation is such, that whereas the plaintiff in the above named cause has brought an action against the said defendants therein; Now, if the said plaintiff shall prosecute its said action with effect, or, in case it fail therein, shall well and truly pay all such costs as shall be awarded and recovered against the said plaintiff in said action, then the above obligation is to be void, otherwise it is to remain in full force and effect.

SEABOARD AIR LINE RAILWAY COMPANY, [SEAL.]
(S.) By MURRAY ALLEN,
Attorney.
ROYAL INDEMNITY COMPANY, [SEAL.]
(S.) By CHAS. E. JOHNSON, JR.,
Attorney in Fact.

3 *Bill of Complaint.*

Filed Nov. 29, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

AUGUSTUS D. WATTS, Commissioner of Revenue of North Carolina; Benjamin R. Lacy, State Treasurer of North Carolina; Baxter Durham, State Auditor of North Carolina; James S. Manning, Attorney General of North Carolina, et al., Defendants.

To the Honorable H. G. Connor, Judge of the District Court of the United States for the Eastern District of North Carolina:

Seaboard Air Line Railway Company, a corporation duly organized and existing under the laws of the States of Virgina, North Carolina and South Carolina, and a citizen of the said states, brings this, its Bill of Complaint against Augustus D. Watts, Commissioner of Revenue of North Carolina, a citizen of the State of North Carolina, whose official residence as Commissioner of Revenue of North Carolina is at the City of Raleigh in said state and in the Eastern District thereof, and Benjamin R. Lacy, Treasurer of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern District of said State, and Baxter Durham, Auditor of the State of North Carolina, and a citizen and resident of the
4 County of Wake in the Eastern District of said State, and James S. Manning, Attorney General of the State of North

Carolina and a citizen and resident of the County of Wake in the Eastern District of said State;

J. W. Cooper, Sheriff of Bertie County, North Carolina;
J. M. Clarke, Sheriff of Bladen County, North Carolina;
F. L. Lewis, Sheriff of Brunswick County, North Carolina;
G. W. Blair, Sheriff of Chatham County, North Carolina;
J. O. Ammons, Sheriff of Columbus County, North Carolina;
John F. Harward, Sheriff of Durham County, North Carolina;
H. A. Kearney, Sheriff of Franklin County, North Carolina;
E. D. Hunt, Sheriff of Granville County, North Carolina;
J. A. House, Sheriff of Halifax County, North Carolina;
L. C. Rosser, Sheriff of Lee County, North Carolina;
D. A. Blue, Sheriff of Moore County, North Carolina;
George C. Jackson, Sheriff of New Hanover County, North Carolina;
H. L. Joyner, Sheriff of Northampton County, North Carolina;
R. L. McDonald, Sheriff of Richmond County, North Carolina;
R. E. Lewis, Sheriff of Robeson County, North Carolina;
W. D. McLaurin, Sheriff of Scotland County, North Carolina;
John S. Royster, Sheriff of Vance County, North Carolina;
D. B. Harrison, Sheriff of Wake County, North Carolina;
R. E. Davis, Sheriff of Warren County, North Carolina;

citizens and residents of the State of North Carolina and of the respective counties in said State named above, and in the Eastern District thereof,

W. S. Braswell, Sheriff of Anson County, North Carolina;
H. A. Logan, Sheriff of Cleveland County, North Carolina;
J. W. Carroll, Sheriff of Gaston County, North Carolina;
W. B. Abernethy, Sheriff of Lincoln County, North Carolina;
W. O. Cochrane, Sheriff of Mecklenburg County, North Carolina;
J. W. Beason, Sheriff of Rutherford County, North Carolina;
Clifford Fowler, Sheriff of Union County, North Carolina;

citizens and residents of the State of North Carolina and of the respective counties in said State named above and in the Western District thereof; and the following citizens of North Carolina, who hold the office of Tax Collector of the city or town of North Carolina appearing opposite their respective names, each of whom is sued as such Tax Collector:

D. I. McKeithen, Aberdeen;
A. D. Cashwell, Abbottsburg;
C. Bullard, Acme;
S. T. Bennett, Apex;
—— ——, Bladenboro;
L. B. McKeithen, Cameron;
Joseph Lowe, Cary;
—— ——, Clarkton;
—— ——, Councils;

J. T. Curl, Creedmore;
J. R. Patton, Durham;
R. B. English, E. Laurinburg;
E. H. Evans, Franklinton;
W. E. Mudd, Gibson;
E. H. Mahone, Hamlet;
S. B. Burwell, Henderson;
Thomas Ascue, Kelford;
J. B. Whitley, Kittrell;
J. I. Covington, Laurinburg;
W. A. Woodfin, Littleton;
H. A. Kearney, Louisburg;
J. P. Russell, Lumberton;
Henry Haithcock, Macon;
A. J. Steed, Maxton;
W. H. Parrish, Middleburg;
O. B. Cook, Norlina;
R. B. Hines, Oxford;
A. M. Breece, Pembroke;
6 F. H. Noole, Pittsboro;
D. McGlachlin, Pinebluff;
P. L. Grant, Rich Square;
S. E. Covington, Rockingham;
Lyman Holloman, Roxobel;
C. L. Gunter, Sanford;
Mrs. J. H. Tilghman, Southern Pines;
W. D. Smith, Vass;
P. E. Fowler, Wake Forest;
J. W. Pierce, Weldon;
B. H. Dewey, Wilmington;
J. B. Young, Youngsville;

all citizens and residents of the Eastern District of North Carolina; and

J. D. Clemmer, Bostic;
C. M. Creswell Charlotte;
W. C. Hicks, Cherryville;
W. L. Carpenter, Crouse;
N. O. Whitaker, Ellenboro;
A. C. Keeter, Forest City;
Thomas Morris, Indian Trail;
D. A. Hamrick, Lattimore;
Spurgeon Sedberry, Lilesville;
R. H. Dellinger, Lincolnton;
Z. B. Griffith, Marshville;
W. L. Hood, Matthews;
James McNeeley, Monroe;
Thomas Dunn, Mt. Holly;
Carl Gaddy, Peachland;
F. L. Autry, Polkton;
A. P. Hill, Rutherfordton;
B. O. Hamrick, Shelby;

A. G. Lay, Stanley;
J. K. Willis, Waco;
L. D. Rivers, Wadesboro;
W. M. Crow, Waxhaw;
7 T. L. Brewer, Wingate;

all citizens and residents of the Western District of North Carolina; and

H. L. Bell, Tax Collector, Roanoke Rapids Township, Halifax County, North Carolina;
G. W. King, Tax Collector, Littleton Township, Halifax County, North Carolina;
J. E. Branch, Tax Collector, Weldon Township, Halifax County, North Carolina;

citizens and residents of the Eastern District of North Carolina; and

G. S. Mays, Tax Collector, District No. 1, Mecklenburg County, and of Special School Districts No. 2 and No. 5 of Paw Creek Township, and of School District No. 1, Craborchard Township, Mecklenburg County, North Carolina;
W. O. Cochrane, Tax Collector, District No. 2, Mecklenburg County, and of Morning Star Township, and of Sharon Township, Mecklenburg County, North Carolina, citizens and residents of the Western District of North Carolina.
Parks Kirkpatrick, Tax Collector, District No. 3, Mecklenburg County, and of Morning Star Township and of Sharon Township, Mecklenburg County, North Carolina, citizens and residents of the Western District of North Carolina.

And complainant respectfully represents that:

1. The complainant is now, and was at all times hereinafter mentioned, a corporation duly organized and existing under the laws of Virginia, North Carolina and South Carolina, and it now does, and did at such other times hereinafter mentioned, own, operate, manage and control lines of railroad and other property in connection therewith in and through the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama, and it is now, and was at all such other times, engaged in operating said lines of railroad in interstate commerce. The complainant's lines of railroad located in the State of North Carolina traverse the counties, cities, towns and other local subdivisions above named in said State.

8 2. The defendant, Augustus D. Watts, is Commissioner of Revenue of the State of North Carolina, duly appointed by the Governor of North Carolina, and under and by virtue of Chapter 40 of the Public Laws of North Carolina of 1921, and duly qualified under the laws of said State and is a citizen of North Carolina whose official residence as Commissioner of Revenue is at the City of Raleigh in said State and in the Eastern District thereof; that the defendant, Benjamin R. Lacy, is the State Treasurer of the State of

North Carolina, duly elected and qualified under the laws of said State and is a citizen and resident of the County of Wake in the Eastern District of said State; that the defendant, Baxter Durham, is the State Auditor of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern District of said State; that the defendant, James S. Manning, is Attorney General of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern District of said State. The other defendants are citizens and residents of the respective counties, cities, towns or local subdivisions in which they are the Sheriffs or Tax Collectors and they are residents of the Eastern or Western Districts of North Carolina in accordance with the location of the said counties, cities, towns or other local subdivisions in the said Eastern or said Western District, as hereinbefore set out. The said defendants, Augustus D. Watts, Benjamin R. Lacy, Baxter Durham and James S. Manning are charged with the duty of levying, assessing and collecting the tax which the State of North Carolina asserts is due to it by the complainant and the other defendants are charged with the duty of collecting the taxes levied in their respective counties, cities, towns and other local subdivisions. More particular reference to the taxes involved in this suit will presently be made.

3. This is a suit in equity and arises under the Constitution and laws of the United States, as will presently more fully appear, and the amount in controversy, exclusive of interest and costs as will hereinafter be specifically shown, exceeds the sum and value
9 of Three Thousand Dollars ($3,000.00). The complainant brings this suit to restrain the defendants from levying, assessing and collecting certain taxes upon the complainant and its property in North Carolina under color of the several statutes of North Carolina hereinafter mentioned. The complainant respectfully shows that unless the defendants and all of them be restrained from enforcing collection of said taxes, it will be deprived of privileges and immunities guaranteed and secured to it by the Constitution of the United States and the Fourteenth Amendment thereof; and further, that it will be deprived of its property without due process of law and will likewise be denied the equal protection of the law, in contravention of the Constitution of the United States and the Fourteenth Amendment thereof; the complainant also shows that the taxes sought to be imposed by virtue and under the authority of the North Carolina statutes constitute a direct burden upon interstate commerce in violation of the Commerce Clause of the Federal Constitution.

4. The complainant shows that the provisions of the Constitution of North Carolina affecting the taxation of itself and other railroad corporations are as follows: Section 3 of Article 5 of the North Carolina Constitution provides, in part:

"Sec. 3. Taxation shall be by uniform rule and ad valorem: Exemptions. Laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies,

or otherwise; and also all real and personal property, according to its true value in money * * * The General Assembly may also tax trades, professions, franchises and incomes. * * *"

Section 6 provides:

"Sec. 6. Taxes levied for counties. The total of the state and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the state for the term required by article nine, section three, of the constitution: Provided, further, the state tax shall not exceed five cents on the one hundred dollars value of property."

Section 9 of Article 7 of the Constitution of North Carolina provides as follows:

"All taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same except property exempted by this Constitution."

5. The complainant shows that prior to May 1st, 1921, the North Carolina Corporation Commission was constituted the State Tax Commission and charged with the duty of valuing for taxation purposes the property of railroads, including that of the complainant, and of imposing, levying, assessing and collecting taxes upon railroad property. The said Corporation Commission derived its powers from Chapters 21 and 131 of the North Carolina Consolidated Statutes of 1919, the Revenue and Machinery Acts of 1919, the Revenue Act passed at the special session of the North Carolina Legislature of 1920, and the Revenue and Machinery Acts of 1921. Reference is prayed to all of these statutes.

Under an Act of the Legislature of North Carolina, ratified on the 8th day of March, 1921, Chapter 40, Public Laws of North Carolina, Session 1921, page 288, the powers and duties of the State Tax Commission were transferred and imposed upon the Commissioner of Revenue.

Under Sections 62, 62*a* and 63 of the Act of the Legislature of North Carolina, approved March 8, 1921, page 225 of the Public Laws of North Carolina, Session 1921, at page 263 (hereinafter referred to as the Machinery Act), it is provided that railroad companies must file certain returns.

11 Under Section 64 of the said Machinery Act, it was made the duty of the Commissioner of Revenue, at such dates as real estate is required to be assessed for taxation, to first determine the value of the tangible property of each division or branch of such railroad, of rolling stock, and all other physical or tangible property.

Section 64 then provides:

"This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions to be considered as in the case of private property."

Section 64 also provides:

"They (referring to the State Tax Commission for which there was thereafter substituted the Commissioner of Revenue as set forth above) shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property."

Section 64 also provides:

"The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the property for the purpose of an ad valorem taxation, and shall be apportioned in the same proportion that the length of such road in each county bears to the entire length of such division or branch thereof; and the State Tax Commission shall certify on or before the first day of September, to the chairman of the county commissioners
12 and the mayor of each city or incorporated town the amount apportioned to his county, city or town."

Secion 65 of the Machinery Act provides for a proportional valuation of interstate railroads in the proportion which the length of the main line of road in the State of North Carolina bears to the whole length of such main line of road, and to determine the value in the State of North Carolina accordingly. Said section contains the following proviso:

"Provided, the Commission shall, in valuing the fixed property in this state, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this state, and any other factor which would give a greater or less value per mile of road in this state than the average value for the entire system. On or after the first Monday in July, the said Commission shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said Commission may, if they see fit, require all argument and communications to be presented in writing."

Section 82 (6½) of an Act entitled "An Act to Raise Revenue" approved March 8, 1921, page 147 of the Public Laws of North Carolina, Session 1921, at page 193, hereinafter called the Revenue Act, provides as follows:

"Railroads. Every railroad company doing business in this state shall annually on or before the thirtieth day of July, make and return to the State Tax Commission in such form and upon such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require for the purpose of carrying out the provisions of this section and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of
13 taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this state shall be found to be the value of the property, tangible and inta-gible, of each such railroad company in the state assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this state shall be one-tenth of one per cent (0.1 per cent) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make report provided for, it shall be the duty of the State Tax Commission to make an approximation from the reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city, or town shall be allowed to collect any taxes under this section."

Section 4 of the said Revenue Act provides, in part, as follows:

"Sec. 4. Corporation taxes payable to State Treasurer. Every corporation, joint-stock association, limited association, limited partnership, or company whatsoever, from which a report is required by law to be made to the Corporation Commission, shall be subject to and pay to the State Treasurer annually the franchise tax imposed by section 82 of this act; it shall be the duty of the State Auditor to mail to every such corporation a statement of the amount of such taxes, which statement shall contain a copy of so much of this section as relates to penalty as notice of penalty for failure to
14 pay said taxes; and it shall be the duty of the treasurer or other officer having charge of any such corporation, joint-stock association, or limited partnership upon which a tax is imposed to transmit the amount of the tax to the State Treasurer within thirty days from the date of such notice. If such tax is not paid by the first day of November, it shall be the duty of the Auditor to send, not later than November fifteenth, final notice to such delinquent corporation that penalty will be imposed if payment is not made as required by this section. If the said tax is not paid by the first day of December next following, the State Treasurer shall certify to the State Auditor a complete list of all such taxes due and unpaid. The State Auditor shall add ten per centum to such taxes, and return to the State Treasurer, charging the State Treasurer with the amount

so added, and the State Auditor shall thereupon certify the same with such percentage added to the sheriff or tax collector of the county in which such delinquent corporation has its principal office, and charge such sheriff or tax collector with the amount so certified. Such certificate by the State Auditor to the sheriff or tax collector in any county shall have the same force and effect as a judgment and execution against the real and personal property of such corporation as is given by Machinery Act for the collection of other taxes, and it shall be the duty of the sheriff or tax collector to proceed to collect same by levy, advertisement, and sale, in the same manner as provided by law for the collection of other taxes."

And section 3 of the said Revenue Act provides, in part:

"No tax on any property in the State shall be levied for any of the uses of the State Government."

Section 14 of the Machinery Act provides as follows:

"The boards of county commissioners of the several counties of the State may, at any regular or called meeting, after the valuation of real and personal property has been completed as provided in this act, in the months of July, August, or September, levy such rate of tax for general county purposes as may be necessary to meet the general expenses of the county, not exceeding the constitutional limitation, and such rates for other purposes as may be authorized by law."

6. For the year 1919 the ad valorem assessment of the properties of complainant in the State of North Carolina was Twenty Million One Hundred Ninety-one Thousand Seven Hundred and Twenty Dollars ($20,191,720.00). In 1920 the State Tax Commission, under the Revaluation Act (Chapter 84, Public Laws of North Carolina, 1919) increased the assessment of said property for 1920 to Thirty-four Million, Seven Hundred Sixty-eight Thousand Four Hundred and Forty Dollars ($34,768,440.00), and complainant paid its taxes thereon to the State Treasurer under written protest. In 1921 the Revenue Commissioner at first assessed said properties at Thirty-four Million Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00). A hearing was had before the Revenue Commissioner and facts adduced showing that said valuation was in excess of the true "actual value" of the property as the said term is defined in Section 28(e) of the Machinery Act, reading in part as follows:

"The words 'actual value,' as used in the several subdivisions of this section, shall be held to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and deemed to mean what the property would bring at cash sale when sold in such manner as such properties are usually sold."

This hearing resulted in the Revenue Commissioner adhering to the assessment of complainant's property at Thirty-four Mil-
16 lion Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00). The complainant petitioned the Commissioner of Revenue for a review of the assessment of its property by the State Board of Equalization. The Revenue Commissioner, under advice of the Attorney General, held that the complainant and other railroads had no appeal to the State Board of Equalization or any other body, but he reheard the matter himself and declined to change said assessment. However, on or about November 21st, 1921, the Commissioner of Revenue changed the assessment from Thirty-four Million Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00) to Thirty-four Million Seven Hundred Sixty-eight Thousand Four Hundred and Forty Dollars ($34,768,440.00). But in making the allocations to the counties, cities and towns, pursuant to Section 64 of the Machinery Act, the Commissioner used the value of Thirty-four Million Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00), instead of Thirty-four Million Seven Hundred Sixty-eight Thousand Four Hundred and Forty Dollars ($34,768,440.00). The complainant avers that the allocation is erroneous because it results in the apportionment to the counties and other local subdivisions of Sixty-six Thousand Two Hundred and Forty-five Dollars ($66,245.00) of value to which they are not entitled. Property assessed locally by the counties in the amount of Seven Hundred Fifty-three Thousand One Hundred and Eighty-five Dollars ($753,185.00) was deducted by Commissioner before making the allocation under said Section 64 of the Machinery Act as is required by that section. And as the amount of Thirty-four Million Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00) is by the Commissioner's own action shown to be excessive by Sixty-six Thousand Two Hundred and Forty-five Dollars ($66,245.00), his allocation of Thirty-four Million Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00) even after de-
17 ducting the value of the property assessed locally is necessarily erroneous in that an excessive amount of Sixty-six Thousand Two Hundred and Forty-five Dollars ($66,245.00) has been apportioned to the counties and other local subdivisions.

7. The complaint further shows that for the reasons hereinafter stated the complainant's properties should not have been assessed at Thirty-four Million Seven Hundred Sixty-eight Thousand Four Hundred and Forty Dollars ($34,768,440.00), the valuation which the Commissioner has finally fixed.

Among other things it was provided in Chapter 38 of the Public Laws of 1921, as follows:

"Sec. 28 (*a*). County Boards to review valuation of real estate. "The board of county commissioners and the county board of appraisers and review, heretofore appointed under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen, (any vacancy which may have occurred to be filled by appointment of the

board of county commissioners), shall meet jointly in each county on the first Tuesday after the first Monday in April, one thousand nine hundred and twenty-one, as a county board of review, to determine if the value of real property as heretofore appraised and assessed in the county as a whole is in excess of the fair value of such property at the time of meeting of such board. The chairman of the board of county commissioners shall be the chairman of the county board of review as thus constituted, and the clerk of the board of county commissioners shall be secretary of the said board. The said board shall make proper inquiry and investigation into the existing values of real property as compared with the assessed and appraised values thereof in the several cities, towns and townships of the county, and if it shall find that the assessed value of such property is in excess of the actual value, it shall find the average percentage of such excess in the county as a whole, or in the several cities, towns and
18 townships, and shall report its findings so made to the State Tax Commission not later than the twentieth day of April, one thousand nine hundred and twenty-one. The values so reported shall be the values at which the property shall be assessed for taxation unless and until the same have been changed and revised by the State Tax Commission and certified to the board of county commissioners of such county, which shall be done not later than the first day of July, one thousand nine hundred and twenty-one.

"Sec. 28 (*b*) Specific Complaints.—The board of county commissioners of the several counties shall have and exercise authority to hear and determine specific complaints of over-valuation or under-valuation of any particular tracts of real property, and after the general equalization order provided for in the preceding subsection has been made, any person who owns property subject to taxation and who finds that said property stands assessed for taxation, after such equalization order has been made at an amount in excess of the actual value of such property on the first day of May, one thousand nine hundred and twenty-one, may have the right to have the same re-assessed and reappraised by the said board by filing with the clerk of the board of county commissioners some time during the month of May, one thousand nine hundred and twenty-one an application in form and substance as follows:

To the Board of County Commissioners, —— County:

I hereby make application for the re-assessment of the real property hereinafter described, for the reason that the said property is now assessed in excess of its actual value on the first day of May, one thousand nine hundred and twenty-one, and do hereby certify
19 that in my best judgment the actual value of said property on that date was as it is stated herein to be:

Location, ——.
Condition, ——.
Acreage, ——.
Assessed Value, ——.
Actual Value May 1, 1921, ——.

—— ——.
(Signature of Complainant.)

Any citizen of the county may file complaint of the under-valuation of any real property in the county, or the board may of its own motion revise the valuation of any property that it finds to be valued at more or less than the actual value of such property on the first day of May, one thousand nine hundred and twenty-one.

The county board of commissioners may appoint the county auditor or any resident freeholder of the county, who has general knowledge of the value of the real property of the county, to investigate any and all complaints filed under the provisions of this section, and make report and recommendations to the said board as to the true value in money of such properties. The county board of commissioners shall thereupon approve or revise such recommendations, and shall, not later than the fifteenth day of July, one thousand nine hundred and twenty-one, make report to the State Tax Commission of the increases and reductions in the valuation of specific properties made under authority of this section.

Sec. 28 (*c*). If the board of county commissioners of any county, at their regular monthly meeting on the first Monday in April, one thousand nine hundred and twenty-one, shall be of the opinion that the valuation of real estate in such county is so unequal as between the owners of real property in such county as to require a more general revision of assessments than is practicable to be made under the provisions of subsections (*a*) and (*b*) of this section, or the value of real property as heretofore appraised in such county as a whole is in excess of the present actual value of such property, it may by resolution so find and order that such revision be made. In the event such order is made, it shall be in lieu of the remedies provided in subsections (*a*) and (*b*) of this section, and the board of county commissioners shall appoint a board of review, composed of three resident freeholders, who have general knowledge of the value of real estate in such county and such board of review may appoint such number as assistants as in their judgment is necessary to complete such revision, not later than the first day of July, one thousand nine hundred and twenty-one. The said board shall take and subscribe to an oath to perform their duties according to the provisions of this act according to the best of their ability, and shall give notice by public advertisement that the board, or one of its members or assistants, will attend at least one day in each township, and as long as shall be necessary to hear evidence as to the true value of the real property therein, and of any property over-valued or under-valued; and the said board shall proceed as speedily as possible to hear and determine what the present true value thereof is, and to make such general review and revision of the assessed value of real property in such county as it finds is necessary to be made, to the end that the same may be fairly and equally assessed, at its present actual value in money. A complete abstract of such revised assessment, by townships, giving average, value per acre, and value of town lots, and the value as a whole, shall be made to the board of county commissioners of such county and to the State Tax Commission, not later than the fifteenth day of July, one thousand nine hundred and

twenty-one, and shall be subject to the authority of the State Tax Commission as a State Board of Equalization, so as to preserve
21 a proper equalized value of real property in the several counties. The board of county commissioners shall fix the expense that may be incurred under this section, such expense to be borne by the county.

"Sec. 28 (*d*). The report of the board of county commissioners, made pursuant to section twenty-eight (*b*), and the abstracts as reported by the board of review under section twenty-eight (*c*), shall be the basis for the assessment of taxes, unless and until the same are changed by the State Tax Commission on or before the first day of September, one thousand nine hundred and twenty-one, and the State Tax Commission shall, on or before the first day of September, one thousand nine hundred and twenty-one, certify down to the board of county commissioners of the several counties, its findings and conclusions upon said report and abstracts.

"Section 28 (*e*). In any proceeding under this Act the county board of review or county board of commissioners, or any of their representatives, shall have access to the question-aires filed by the owners of the real property in the county under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen, the tax rolls for the several townships, and any other records pertaining thereto."

It shall be the duty of the State Tax Commission to exercise the authority of supervision herein imposed, to the end that, as nearly as may be, property of all classes in all counties of the state may be fairly and equally valued in accordance with the requirements of the Constitution and the provisions of this act, and if in any case in doubt as to whether changes in valuation in any county should be approved, it shall have the authority, and it shall be its duty, to make or cause to be made, such investigation as it may deem necessary to determine the facts and reach a just conclusion.
22 The words "actual value" as used in the several subdivisions of this section, shall be held to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and deemed to mean what the property would bring at cash sale when sold in such manner as such properties are usually sold.

"Sec. 28 (*f*). Any taxpayer in any county may appeal, within thirty days, to the State Tax Commission, from any findings by the Board of County Commisioners.

"Sec. 28 (*g*). Any taxpayer owning property assessed originally by the State Tax Commission may make applicatin to the State Tax Commission for a review of the assessment of its property in the same manner herein provided for complaints by property owners before the county boards, and the State Tax Commission may hear and determine such complaints."

Acting in accordance with the authority imposed upon them by Section 28*a* of said Chapter 38 of the Public Laws of 1921 the Boards of County Commissioners and County Board of Appraisers and Review of the counties hereinbelow set out, appointed under Chapter 84 of the Public Laws of 1919, met jointly as provided in said statute, and within the time appointed therein, as the County Boards of Review, to determine if the value of real property, as heretofore appraised and assessed under said Chapter 84 of the Public Laws of 1919 in said counties, as a whole, was in excess of the fair value of such property at the time of the meeting of such boards, and after making inquiry and investigation into the excess of the assessed and appraised valuation of real property, in the several cities, towns and townships in said counties, as is provided in said section 28*a* found that the average percentage of excess in the said counties as a whole was as is in the next paragraph herein set out and reported their various findings to the State Tax Commission as provided in that section, and the said State
23 Tax Commission did not change or revise the said valuation. and, in accordance with the said section, the said percentage values so reported became the values at which the real property in said counties was assessed for taxation for the year 1921, the same being the percentage reduction in the value of such real property which had theretofore been assessed for taxation in the year 1920 under said Chapter 84 of the Public Laws of 1919.

The reductions made in said assessments and valuations of real property in the several counties, and in the several cities, towns and townships, therein through which complainant's line of railroad runs, for the year 1921, under the valuation and assessment of the year 1920, are as follows:

Anson	20% and 10% in towns.
Bertie	25%
Bladen	15%
Chatham	25%
Cleveland	15%
Durham	25%
Franklin	40%
Gaston	25%
Granville	33⅓%
Halifax	40%
Lee	33⅓%
Lincoln	35%
Mecklenburg	25%
Northampton	33⅓%
Rutherford	10%
Union	25%
Vance	33⅓%
Warren	33⅓%

In accordance with Section 28*c* of said Chapter 38 of the Public Laws of 1921, a re-valuation and new assessment was ordered and

made in the counties of Robeson, and Scotland of the real property in those counties and upn such revaluation the real property
24 in those counties was reduced by the following percentages under the assessment of the year 1920, to-wit:

Robeson	40%
Scotland	1.1%

And upon the certification of such revaluation to the said State Tax Commission and Board of Equalization no change was made by the said Tax Commission and said Board of Equalization and thereupon said revaluation so made by the said County Board of Review became the value of the real property in those counties for the year 1921 and assessments thereon were and are made in accordance therewith.

The Board of County Commissioners and County Board of Appraisers and Review of Brunswick, Columbus, Moore, New Hanover, Richmond and Wake Counties made no reduction and certified no reduction in those counties to the State Tax Commission.

Complainant avers that in assessing and valuing its property in North Carolina for the year 1921, the Commissioner of Revenue declined to give to complainant the benefit of any horizontal percentage reductions upon its real property which was allowed to other persons and corporations, and your complainant protested against said assessment and requested a hearing. A hearing was had before the said Commissioner of Revenue August 16, 1921, and facts were produced before him showing that such assessment so made by him was unfair, was discriminatory, and would be taking the property of your complainant without due process of law, and denying to it the equal protection of the law and was not uniform, and was not in accordance with said Chapter 38 of the Public Laws of 1921, and should be reduced in order to equalize the value of the complainant's property with that of other persons and corporations assessed for taxes for the year 1921 under the laws of North Carolina. Complainant avers that for the year 1920 its property as well as all other property was assessed at its true value within the meaning
25 of the tax statutes of North Carolina; that on account of the general depreciation in property values in North Carolina, the complainant's property should be assessed for taxation at a lower valuation for 1921 than it was for 1920. Complainant avers that the same conditions which brought about the reduction in the valuation of real estate in the counties wherein reductions were made apply with equal, if not greater, force to complainant's property. The deflation in property values was not confined to real estate of individuals but was general and affected the real estate of the complainant and its property generally, as well as all other property. Complainant avers that the counties made horizontal reductions or revaluations affecting the property in the counties as a whole and such horizontal reductions or revaluations were not based upon the reduced value of any particular parcel of real estate, but were based upon general conditions applicable to all alike and therefore the

complainant was entitled to the benefit thereof. Complainant shows that the average reduction made in 1921 assessment of real property generally under the 1920 assessment by the counties traversed by its line is approximately twenty-two per cent, and the complainant avers that its 1921 assessment should have been reduced by that proportion, at least, under its 1920 assessment. The complainant avers that the failure and refusal of the Commissioner of Revenue to grant the complainant a reduction in the assessment of its properties while the counties made a systematic reduction in the valuation of other real estate and property generally resulted in a discrimination against the complainant; and complainant avers that such discrimination is in contravention of Section 3 of Article 5 of the Constitution of North Carolina and likewise denies the complainant the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States.

8. The Commissioner of Revenue, pursuant to the authority which the aforementioned statutes, and particularly Section 64 of the said Machinery Act, purport to confer upon him, assessed
26 and valued the complainant's property in North Carolina at the sum and value of Thirty-four Million Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00); which amount was subsequently changed to Thirty-four Million Seven Hundred Sixty-eight Thousand Four Hundred and Forty Dollars ($34,768,440.00); the complainant is advised and believes that the defendants will under Sections 4 and 82 (6½) of the said Revenue Act attempt to levy and collect taxes from the complainant in the amount of Thirty-four Thousand Seven Hundred Sixty-eight Dollars and 44/100 ($34,768.44), this amount being one-tenth of one per cent of the valuation placed upon the complainant's property by the Commissioner of Revenue pursuant to said Section 64 of the Machinery Act and Section 82 (6½) purports to give the State of North Carolina the right to impose taxes at the rate just mentioned. And the complainant further avers that the various counties, cities, towns and other taxing subdivisions of North Carolina will, unless restrained from so doing, attempt to collect from the complainant taxes based upon their local rates of levy as applied to the erroneous and excessive valuation of the complainant's properties, the Commissioner of Revenue having, as has heretofore appeared, allocated or apportioned the excessive valuation of Thirty-four Million Eight Hundred Thirty-four Thousand Six Hundred and Eighty-five Dollars ($34,834,685.00) to the respective counties, cities and towns pursuant to Section 64 of the Machinery Act.

9. The complainant shows that the tax which Section 82 (6½) of the said Revenue Act purports to impose is not in reality a franchise tax or privilege tax, as the statute denominates it, based upon the value of the exercise of the complainant's franchise or privilege in North Carolina, but is in fact an ad valorem tax based upon the value of the complainant's property in the State. And as

such tax is, pursuant to Section 3 of the said Revenue Act, not levied upon other property in North Carolina, it is not levied by a uniform rule upon all property in North Carolina and, therefore, the
27 said Section 82 (6½) is unconstitutional and void because it is in contravention of Section 3 of Article 5 of the Constitution of North Carolina. The complainant further avers that the said Section 82 (6½) of the said Revenue Act, in that it imposes a tax upon the complainant's property without imposing a like tax upon the property of other owners, denies the complainant the equal protection of the law and deprives the complainant of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

The complainant further avers that this so-called Franchise Tax violates the uniformity section of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States in that as to all other corporations it is measured by the capital stock, whereas as to railroads it is based upon the ad valorem value for taxation.

10. The complainant further avers that even if it is conceded the tax levied under Section 82 (6½) of the Revenue Act is a franchise tax, yet the said statute is nevertheless unconstitutional and void in that it is violative of the scheme of taxation which the North Carolina Constitution contemplates. That instrument by necessary intendment contemplates a dual system of taxation, one set of taxes being leviable by the State and the other by the counties. The complainant therefore avers that the scheme of taxation brought about by Sections 3 and 82 of the Revenue Act whereunder the State derives its entire revenue from corporations, while Section 3 of such Act exempts the property of all other owners from taxation for State purposes, is unwarranted by the State Constitution which mandatorily requires that all property shall bear its just proportion of the taxation burden. The complainant avers that the North Carolina Legislature had no power to exempt a large class of property from liability to State Taxation and recoup the loss of revenue thereby occasioned by imposing the entire burden upon the properties of corporations. Such a method or scheme of taxation is plainly
28 at variance with that intended to be established by the Sections of North Carolina Constitution hereinbefore mentioned, and consequently Section 82 (6½) which attempts to impose a part of this additional taxation burden upon the complainant is therefore void. The complainant further avers that the said Section 82 (6½) of the said Revenue Act, in that it imposes a tax upon the property of the complainant without imposing a like tax upon the property of other owners, denies the complainant the equal protection of the law and deprives the complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

And the complainant further shows that the proposed scheme of taxation is inequitable in that the complainant is charged with an undue proportion of the expenses of the State Government, and in

addition thereto, is charged with local taxation at the same rates as individual tax payers, who as heretofore seen pay no state taxes whatever.

Complainant also avers that if the so-called Franchise Tax is construed to be a tax for the privilege of doing business, it is unconstitutional and void as a tax upon the privilege of engaging in interstate commerce and violates the commerce clause of the Constitution of the United States.

11. The complainant avers that the tax imposed by said Section 82 (6½) is in all events illegal and void to the extent that it is levied upon the excessive and erroneous assessment made by the Commissioner of Revenue as aforesaid.

12. The complainant also avers that the tax imposed by said Section 82 (6½) has the effect of bringing about double taxation of the complainant's property in that its property is subject to the local rates of levy made by the counties, cities and towns and in addition thereto the said Section 82 (6½) imposes another tax upon the same value upon which the so-called franchise tax is levied, while the property of individuals is not subject to the tax levied under Section 82 (6½). The complainant avers that such a scheme of
29 taxation takes its property without due process of law and denies it the equal protection of the law which is in violation of the Fourteenth Amendment to the Constitution of the United States as well as Article 5 Section 3 of the Constitution of North Carolina.

13. Complainant avers that under the scheme of laws provided by the State of North Carolina, all taxpayers other than railroads and others assessed by the Revenue Commissioner have the right to appeal to and the duty of equalization is placed upon the State Board of Equalization consisting of three individuals. That prior to 1921 the railroad assessments were fixed by a board of three, known as the State Tax Commission, but under the law of 1921 the assessment is fixed by the Revenue Commissioner and the law does not provide, as was the legislative intention under the heretofore recognized policy of the State, for any appeal from this assessment fixed by the one individual. This is a denial of the equal protection of the law and of the uniformity clause of the North Carolina Constitution.

14. Complainant shows that it will owe to the counties and municipalities the legally enacted tax upon whatever may be found to be the legal assessment of its property for taxes in the State of North Carolina, and inasmuch as it has no desire to embarrass the counties and municipalities in the collection of the revenue to which they may be entitled, it expresses a willingness, if any plan may be devised under which it may legally do so, to pay the taxes based upon a certainly legal assessment of its property.

15. Complainant avers that the so-called Franchise Tax became due October 15th, 1921, and under Section 4 of the Revenue Act it

may be made a lien upon the complainant's property in North Carolina and a cloud upon the title thereto. The complainant has no remedy provided by the North Carolina Statutes to contest the validity of a tax payable direct to the State Treasurer, as is the said tax involved in this suit, other than a suit for injunction. The complainant therefore has no adequate remedy at law and consequently brings this suit.

30 Complainant further avers the assessment herein complained of was on September 2, 1921, certified to the State Auditor, and to the several counties and municipalities in the State of North Carolina in which complainant's lines are subject to tax. Complainant has, therefore, joined as parties defendant hereto the State Auditor and the State Treasurer, who, under the law, respectively charge for collection and receive payment of the franchise tax, and the Sheriff of each county in which complainant has property, upon whom the law places the duty of collecting the county taxes levied upon said illegal assessment, and the City or Town Tax Collector of each incorporated city or town in which complainant has property, upon each of whom the law imposes the duty of collecting the city or town taxes on said illegal assessment, and unless said officers are joined in this suit, complainant will be required to institute a number of suits, all of which will involve the same and the one question of the validity of such assessment made by the Commissioner of Revenue. The assessment is made as an entirety by the Revenue Commissioner and by him apportioned to the several counties and municipalities of the State. The boards of County Commissioners and the Chairman of the County Commissioners and the Mayor of each incorporated city or town do not make the assessment and are not empowered to change the same. They are required by law to assess against the complainant on the proportion of said invalid assessment so certified to it or him the tax imposed for county, township, city, or other tax district purposes and levied on other property.

Unless the tax collecting officers of the several counties and municipalities are restrained, they will proceed under the law to collect the tax on the illegal assessment, which tax became due on the first Monday in October. Under the law of North Carolina, the taxes so assessed in behalf of the State, counties, towns and cities, if not paid, will under the Statutes of North Carolina become a first lien upon the property of the complainant in North Carolina and will be a cloud upon the title to said property, and if said taxes are not paid as assessed, the penalties as provided by law will attach and its

31 property will be sold for the taxes, all to the great damage of complainant for which it has no adequate remedy at law.

Prayer.

Wherefore, and for as much as complainant is remediless in the premises, according to the common law, and remediable only in equity, and that complainant may not suffer irreparable injury and damage, and may be permitted to pursue and carry on its business

without unlawful hindrance and destruction, and that the railroads by complainant operated in the State of North Carolina as aforesaid and its other property herein may not be subjected to illegal liens and clouds, complainant prays for a writ of subpœna to issue against the defendants and each and every one of them named and described as aforesaid, to appear and full and true answer make to this bill of complaint, but not under oath, answer under oath being waived, and that said defendants, and each and every one of them, be enjoined by final decree, and, meanwhile, by a preliminary injunction as follows, to wit:

That said Augustus D. Watts, Commissioner of Revenue of North Carolina, be enjoined and restrained from taking, or causing to be taken, any action towards enforcing the tax, or any part thereof, which the said Section 82 (6½) of the said Revenue Act imposes upon the complainant or its property in the state of North Carolina, and that he be enjoined and commanded to cancel the assessment made by him against the complainant with respect to the tax imposed by the said Section 82 (6½) of the said Revenue Act.

That Baxter Durham, as Auditor of North Carolina, be enjoined and restrained from charging to complainant for collection and that Benjamin R. Lacy, as State Treasurer, be enjoined and restrained from collecting from complainant the tax or any part thereof imposed by said Section 82 (6½) of the said Revenue Act.

That James S. Manning, as Attorney General of North
32 Carolina, be enjoined and restrained from instituting or authorizing the institution of any suit or proceedings to collect the said tax.

That each of the defendant Sheriffs aforesaid of the respective counties be enjoined and restrained from collecting or taking any steps to collect from complainant upon the proportion of said assessment apportioned to and certified by the Commissioner of Revenue as being apportioned to his County, any and all taxes levied thereon for County, Township or other taxing district purposes, until the final order of this Court.

That each of the defendant city or incorporated town tax collectors of the respective cities and towns aforesaid, be enjoined and restrained from collecting or taking any steps to collect from complainant upon the proportion of the said assessment apportioned to and certified down by the Commissioner of Revenue to the respective Mayors of said cities and towns as being apportioned to his said city and town any and all taxes levied thereon for the city, town or other municipality purpose until the final order of this Court.

That each of the defendants above named, tax collectors for special taxes, be restrained and enjoined from collecting or taking any steps to collect from the complainant upon the proportion of the said assessment apportioned to their respecive special tax districts, any taxes levied thereon for said tax districts or for any purposes therein, until the final order of this Court.

Complainant further prays that the tax statutes of North Carolina herein alleged to be unlawful be decreed by this Court to be uncon-

stitutional and invalid, and that no assessment for taxation be made against the complainant thereunder, and no tax be levied against or collected from the complainant thereunder; and for all such
33 other, further, general, and special relief to which in equity it may be entitled.

This is the first application for injunction in this cause.

MURRAY ALLEN,
Solicitor for Complainant.

FORNEY JOHNSTON,
JAMES F. WRIGHT,
Of Counsel.

STATE OF GEORGIA,
City of Atlanta:

W. L. Stanley, being duly sworn, deposes and says that he is General Attorney of the Seaboard Air Line Railway Company, the above named complainant, which is a corporation, that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

W. L. STANLEY.

Subscribed and sworn to before me this 28th day of November, 1921.

[Seal of Notary Public.] E. L. CHAPPELL,
Notary Public.

34 *Service of Bill of Complaint.*

Filed Dec. 1, 1921.

Received at Raleigh last night, November 30th.

Executed at Raleigh, December 1st by delivering copies of this complaint with Hon. Cameron Morrison, Governor of North Carolina, James S. Manning, Attorney General of North Carolina, Baxter Durham, State Auditor of North Carolina, B. R. Lacy, State Treasurer of North Carolina, Augustus D. Watts, Commissioner of Revenue of North Carolina, as within I am commanded.

GEO. H. BELLAMY,
U. S. Marshal,
By —— ——,
Deputy Marshal.

I certify that the within is entered and filed this day.
Dec. 1, 1921.

S. A. ASHE,
Clerk.

35 *Stipulation as to Service.*

Filed Nov. 29, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

AUGUSTUS D. WATTS, Commissioner of Revenue of North Carolina; Benjamin R. Lacy, State Treasurer of North Carolina; Baxter Durham, State Auditor of North Carolina; James S. Manning, Attorney General of North Carolina, et al., Defendants.

Stipulation.

In this cause, it is agreed that a copy of this bill and order to show cause why preliminary injunction should not be issued shall be served upon the defendants, other than the State Officials, by the Clerk of the United States District Court mailing to each of the defendants named a copy of the bill and order to show cause. As to the State Officials a copy of the bill and order to show cause shall be served by the Marshal in the usual way.

The writ of subpœna shall be served in the same manner as the bill and order to show cause, that is, by the Marshal upon the State Officials named in the bill and by the Clerk of the United States District Court mailing to each of the defendants named a copy of the subpœna, all the papers named to be sent by registered mail. And it is stipulated that this service shall be the same in legal effect as if made by the Marshal.

JAMES S. MANNING,
Attorney General.
SEABOARD AIR LINE RAILWAY COMPANY,
By MURRAY ALLEN,
District Counsel.

Agreed to:

GEO. H. BROWN,
Of Counsel.

This 29 day of November, 1921.

3C *Subpœna and Marshal's Return on Same.*

Filed Dec. 1, 1921.

UNITED STATES OF AMERICA,
Eastern District of North Carolina:

District Court, Fourth Circuit, at Raleigh.

The United States of America to Hon. Cameron Morrison, Governor of North Carolina; James S. Manning, Attorney General of North Carolina; Baxter Durham, State Auditor of North Carolina; B. R. Lacy, State Treasurer of North Carolina; Augustus D. Watts, Commissioner of Revenue of North Carolina, Greeting:

We command you, that you appear before the Judges of our District Court of the United States of America, for the Eastern District of North Carolina, at the office of the Clerk of said Court, in the City of Raleigh, in said District, on the 19th day of December, next, to answer the bill of complaint of Seaboard Air Line Railway Company, filed in the Clerk's office of said Court, in said City of Raleigh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of Judgment being pronounced against you by default.

To the Marshall of the Eastern District of North Carolina to Execute.

Witness, the Hon. William Howard Taft, Chief Justice of the Supreme Court of the United States, at Raleigh, in said District, the 29th day of November, 1921, and in the 145th year of the Independence of the United States.

Issued the 29th day of November, 1921.

(S.) S. A. ASHE,
Clerk,

(S.) By S. A. ASHE, JR.,
Deputy Clerk U. S. District Court.

The within-named defendants are notified that unless they enter their appearance in the Clerk's office of said District Court at Raleigh and file their answer, or other defense, on or before the 20th day after service hereof, excluding the day of service, the bill filed herein will be taken as confessed and a decree entered accordingly.

(S.) S. A. ASHE,
Clerk,
By S. A. ASHE, JR.,
Deputy Clerk U. S. District Court.

Received at Raleigh, last night, November 30th, 1921.

Executed at Raleigh, December 1st, 1921, by reading the within subpœna and leaving copy with Hon. Cameron Morrison, Governor

of North Carolina, James S. Manning, Attorney General of North Carolina, Baxter Durham, State Auditor of North Carolina, B. R. Lacy, State Treasurer of North Carolina, Augustus D. Watts, Commissioner of Revenue of North Carolina, as within I am commanded.

GEO. H. BELLAMY,
U. S. Marshal,
By T. W. BARTHOLOMEW,
Deputy Marshal.

37 *Clerk's Certificate as to Service.*

Filed Dec. 1, 1921.

I, S. A. Ashe, Clerk, certify that in accordance with stipulation filed in this case, I have completed service by sending by Registered mail to each of the defendants herein the copy of the Bill of Complaint, Order to Show Cause and Equity Subpœna.

Expenses $6.20.

S. A. ASHE,
Cerk U. S. District Court.

I certify that the within is entered and filed this day.
Dec 1, 1921.
S. A. ASHE,
Clerk.

38 *Application for Interlocutory Injunction.*

Filed Nov. 29, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina, et al.

Comes the above named plaintiff and shows the Court:

That it has instituted in this Court by bill of complaint an action against A. D. Watts, as Commissioner of Revenue of the State of North Carolina, and other defendants as shown in said bill which is now referred to and made a part of this application, the object and purpose of the action being to secure from this Honorable Court an order enjoining preliminarily and perpetually the defendants, who are tax assessing, collecting, and enforcing officers of the State of North Carolina and its municipal subdivisions, from collecting or

instituting proceedings to collect State, County, Municipal, or other taxes leved upon or based upon an illegal overassessment of plaintiff's property, made and certified to them by the Revenue Commissioner of North Carolina, which assessment is contrary to the Constitution and laws of North Carolina and the Constitution of the United States. The bill alleges and sets forth the grounds of unconstitutionality of the assessment and of the statutes of North Carolina under which said invalid assessment was made and under which the illegal taxes will be collected by the defendants named in said bill unless restrained by this Honorable Court, all of which is more fully alleged, set out, and explained in the bill of complaint filed herein.

39 Plaintiff alleges that the franchise tax levied under Section 82 of the Revenue Act of North Carolina, ratified March 8, 1921, is unconstitutional and that no tax can be levied thereon under any assessment, and the action of the State's tax collecting officer in the execution of said void statute is sought to be enjoined. Said tax is due and payable on or before the 22nd day of October, 1921, and if not paid by December 1, 1921, a penalty of ten per cent (10%) is added to such tax, and other pains and penalties are inflicted.

The ad valorem taxes levied by the counties, towns and local taxing districts, upon said illegal assessment is now due and payable, and unless paid, the Sheriff may levy and sell property of this plaintiff after November 1, 1921, and other pains and penalties will be inflicted.

The municipal and other taxes levied upon said illegal assessment will become due and the collection thereof will be undertaken prior to the determination of this cause unless the tax collecting officers are restrained.

Wherefore, application is made under Section 266 of the Judicial Code for an interlocutory injunction as prayed for in said bill, and this Court is petitioned to call to his assistance to hear and determine this application two other judges, and that the statutory notice of the hearing of this application be given the Governor and the Attorney General of the State of North Carolina and each of the defendants to the said bill, and an order issued requiring the defendants to show cause at the time and place to be fixed by this Court according to law why said interlocutory injunction should not issue as prayed for.

This application is based upon the verified bill of complaint on file herein.

MURRAY ALLEN,
Attorney for Plaintiff.

40 *Notice of Hearing of Application for Interlocutory Injunction under Judicial Code, Section 266.*

Filed Nov. 29, 1921.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina, et al.

To Honorable Cameron Morrison, Governor of the State of North Carolina; Honorable James S. Manning, Attorney General of North Carolina; Honorable A. D. Watts, Revenue Commissioner of the State of North Carolina; Honorable Baxter Durham, Auditor of the State of North Carolina; Honorable Banjamin R. Lacy, Treasurer of the State of North Carolina, and to each of the defendants named in the above bill:

You, and each of you, are hereby notified that the Seaboard Air Line Railway Company, plaintiff, has filed its verified bill of complaint in the District Court of the United States for the Eastern District of North Carolina against A. D. Watts, Revenue Commissioner, et al., praying an injunction against the named tax assessing, collecting and enforcing officers of the State of North Carolina and its municipal subdivisions from collecting or instituting proceedings to collect State, county, municipal, or other taxes levied upon or based upon the alleged illegal overassessment of plaintiff's property for the year 1921, made and certified to by the Revenue Commissioner of the State of North Carolina, and also praying that said tax laws of North Carolina be declared unconstitutional, as will appear from the bill filed herein.

In this cause plaintiff has made application for an interlocutory injunction under Section 266 of the Judicial Code of the United States.

41 The application for such interlocutory injunction will be heard in the United States District Court, in the City of Raleigh, North Carolina, on the 12th day of December, 1921, at 10 o'clock A. M., and you, and each of you, are notified to appear at said time and place and show cause, if any, why the interlocutory injunction prayed for should not be granted.

Done in open court this 29 day of November, 1921.

H. G. CONNOR,
Judge.

42 *Service of Notice of Hearing.*

Filed Dec. 1, 1921.

Received at Raleigh, last night, November 30th, 1921.
Executed at Raleigh, December 1st, 1921, by reading the within subpœna and leaving copy with Hon. Cameron Morrison, Governor of North Carolina; James S. Manning, Attorney General of North Carolina, Baxter Durham, State Auditor of North Carolina; B. R. Lacy, State Treasurer of North Carolina; Augustus D. Watts, Commissioner of Revenue of North Carolina, as within I am commanded.

GEO. H. BELLAMY,
U. S. Marshal,
By T. W. BARTHOLOMEW,
Deputy Marshal.

43 *Order for District Judge on Application for Interlocutory Injunction.*

Filed Nov. 29, 1921.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMANY

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina, et al

The application for an interlocutory injunction was presented to me this 29th day of November, 1921; and having read and considered the verified bill filed in this cause, and the application for a hearing for interlocutory injunction under Section 266 of the Judicial Code, and being advised that for the reasons set forth in said application and upon the grounds stated therein and in the verified bill, plaintiff is entitled to have its application heard under Section 266 of the Judicial Code:

It is ordered that the application be filed and a hearing of the application for an interlocutory injunction be had and proceeded with in accordance with Section 266 of the Judicial Code as amended by Act of Congress approved March 14, 1913, and such hearing is set down for the 12th day of December, 1921, at the United States Court rooms in the city of Raleigh, North Carolina, at 10 o'clock A. M.

It is further ordered that notice of said hearing, not less than five days, shall be given to the Governor and the Attorney General of the State of North Carolina, and to each of the defendants to this suit. And I hereby call to my assistance at said hearing of said

application the Honorable Edmund Waddill, Jr., Circuit Judge of this Circuit, and the Honorable James E. Boyd, District Judge of the Western District of North Carolina.

This Nov. 29, 1921, at Raleigh, North Carolina.

H. G. CONNOR,
District Judge.

44 *Stipulation of Counsel & Interlocutory Order.*

Filed Nov. 30, 1921.

In the District Court of the United States, for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

AUGUSTUS D. WATTS, Commissioner of Revenue of North Carolina; Benjamin R. Lacy, State Treasurer of North Carolina; Baxter Durham, State Auditor of North Carolina; James S. Manning, Attorney General of North Carolina, et al., Defendants.

Stipulation.

The following stipulation is entered into between counsel for plaintiff and the Attorney General of North Carolina and his associates as counsel for all defendants, for each of which defendants they have entered an appearance:

It is agreed that in order that the defendants may have sufficient time in which to prepare the defense, the application for an interlocutory injunction under Section 266 of the Judicial Code is, with the consent of the Court, continued until such date as the Court may select following January 1st, 1922.

The foregoing continuance being agreed upon and it appearing that before the hearing and determination of the application certain taxes will come due to the State of North Carolina, and to the counties, cities, towns and other taxing districts; therefore, it is agreed by the Attorney General of North Carolina and his associates as representing all of the defendants, that if the Seaboard Air Line Railway pays the taxes it agrees hereinafter to pay, then no further or other taxes sought to be enjoined in the bill will be demanded or collected or any action or suit of any character begun to collect or any penalty assessed for the nonpayment thereof until the further order of the Court.

45 The Seaboard Air Line Railway Company agrees that it will pay when due in accordance with the laws of the State of North Carolina to all counties, cities or towns, special school districts, or other special taxing districts all taxes that may be due each county, city, special school or other special taxing district of the State, on its proper proportionate share of an aggregate ad valorem assessment against plaintiff of $27,119,384.00.

The Attorney General of North Carolina agrees that he will take all necessary action to have the Commissioner of Revenue certify to the several counties and taxing districts of North Carolina their proper proportion of assessment of $27,119,384.00 as soon after the date hereof as may be practicable and, if possible, within such period as will enable the Railroad Company to take advantage of any discount that it may be entitled to under the law.

It is agreed between the parties that the Seaboard Air Line Railway Company is not to demand a receipt in full for its 1921 taxes in consideration of the payment it makes, but is to receive a receipt for the amount of the taxes paid, and the amount of taxes so paid shall be in full of said taxes due if an assessment shall be finally fixed at a sum not in excess of $27,119,384.00, or such payment shall be a credit upon all taxes that may be due if the assessment of plaintiff's property for ad valorem tax purposes for the year 1921 shall be finally fixed in excess of said $27,119,384.00, provided that such payment shall be without prejudice to any rights of the Seaboard Air Line Railway Company growing out of any illegality in the tax rates of the individual counties, cities, towns and special school and taxing districts to which payment is made under this stipulation.

It is further agreed that if defendants desire to file an answer prior to the hearing of the application for an interlocutory injunction they shall file such answer or any motion or other pleading they desire to file by January 1st, 1922, and furnish opposing counsel with copies thereof.

46 Plaintiff shall have until January 8th, 1922, to file any motion or reply pleading and any affidavits in support of bill or motion for interlocutory injunction or in reply and furnish opposing counsel with copies thereof.

Defendants shall have until January 10, 1922, to file affidavits in support of their answer or in reply and plaintiff shall have until hearing to file reply affidavits.

This stipulation to become effective and filed in this Court upon approval hereof by the Court.

This 30th day of November, 1921.

(S.) MURRAY ALLEN,
Attorney for Plaintiff.

(S.) JAMES S. MANNING,
Attorney General of North Carolina.

(S.) GEO. H. BROWN,
Of Counsel for Defendants.

Approved November 30th, 1921.

(S.) EDMUND WADDILL, JR.,
U. S. Circuit Judge.
(S.) JAS. E. BOYD,
(S.) H. G. CONNOR,
U. S. District Judges.

47 *Motion to Dismiss.*

Filed December 7, 1921.

In the District Court of the United States, Western District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS, Commissioner of Revenue, et als., Defendants.

Motion.

Come now the defendants, A. D. Watts and others named as defendants in the complaint in this suit, and move the court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss this suit because it is conceded in the complaint that the plaintiff owes and is liable to pay to the defendants taxes on property situated within the State of North Carolina and in the several counties named in the complaint and in the several cities, towns and taxing districts named in the complaint, of the value of $27,119,384.00, on which the plaintiff, as it appears in its complaint, has not paid or tendered payment of the taxes due thereon.

(S.) JAMES S. MANNING,
Attorney General;
(S.) FRANK NASH,
Assistant Attorney General,
Solicitors for Defendant.

(S.) LOCKE CRAIG,
(S.) W. P. BYNUM,
(S.) S. S. ALDERMAN,
(S.) GEO. H. BROWN,
Of Counsel.

48 *Order Continuing Motion to Dismiss.*

Filed December 7, 1921.

No. 442.

SEABOARD AIR LINE RAILWAY CO.

vs.

A. D. WATTS, Com. of Revenue, et al.

Order Continuing Motion to Dismiss.

This cause coming on to be heard in Raleigh on this 7th day of December, 1921, by consent, upon the application of complainant for an interlocutory injunction as prayed for in the bill and as set out in order to show cause, and the defendants having filed a motion to dismiss the bill, and it appearing that the complainant and defendants have entered into a stipulation, and the original of which is filed in this Court, it is, on motion of the complainant, by consent of the defendants, ordered, adjudged and decreed that the application and motion for the interlocutory injunction and the motion to dismiss the bill be continued to be heard in the Court room of the United States District Court at Greensboro in the Western District of North Carolina at such time as the similar actions brought in the Western District of North Carolina by the Southern Railway Company, the Atlantic & Yadkin Railroad Company and the Atlantic Coast Line Railroad vs. A. D. Watts, et al., shall be heard and pending said hearing the stipulation entered into by the complainant and defendants and approved by the Court shall be effective.

H. G. CONNOR,
United States District Judge.

Seen and approved:

MURRAY ALLEN,
Counsel for Complainant.
JAMES S. MANNING,
Attorney General;
GEO. H. BROWN,
Counsel for Defendants.

Answer.

Filed Dec. 21, 1921.

49 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

442.

SEABOARD AIR LINE RAILWAY CO.

vs.

A. D. WATTS. Commissioner of Revenue, and Others.

Answer.

Come now A. D. Watts and the other defendants in the above entitled suit and, answering the complaint filed by the plaintiff therein, say:

1. The allegations of article one are admitted. The defendants aver, however, that the plaintiff is operating its said lines of railroad in North Carolina not only in interstate commerce, but also in a very extensive business of intrastate commerce, carried on wholly within the limits of the State of North Carolina.

2. The allegations of article two are admitted, except as to the name of the defendant Watts, and except that it is denied that the defendants Watts, Lacy, Durham, and Manning are charged with the duty of levying or assessing taxes against the plaintiff, except that beginning with the year 1924 it will be the duty of the defendant Watts, Commissioner of Revenue, to assess the property of the plaintiff and other railroads in the State quadrennially for taxation.

3. The allegations of article three are denied, except that it is admitted that this is a suit in equity; that the amount in controversy, exclusive of interest and costs, exceeds the sum and value of $3,000; and that the plaintiff in this suit seeks to have the
50 defendants restrained from collecting certain taxes under the statutes of North Carolina.

4. The allegations of article four are admitted.

5. It is admitted that the various sections and parts of statutes set forth in article five are correctly quoted. The allegations of article five are admitted, except as hereinafter qualified or denied.

Section 64 of the Machinery Act of 1921, referred to on page 9 of the complaint, did not make it the duty of the Commissioner of

Revenue to do the things therein stated, but made it the duty of the State Tax Commission. Subsequently there was enacted a separate statute, ratified March 8, 1921, being Public Laws, Session 1921, page 388, whereby the powers and duties of the State Tax Commission were transferred to and imposed upon a newly created officer to be called the Commissioner of Revenue. That statute, however, and the said Section 64 of the Machinery Act of 1921, of which it was amendatory, did not require the Commissioner of Revenue to assess the properties of railroads for taxation for the year 1921 or for any year thereafter until 1924. The State Tax Commission had made the assessments of railroad properties in North Carolina, including the plaintiff's, for taxation for 1920, and the said assessments had been approved by the General Assembly of North Carolina in its Extra Session of 1920, Public Laws 1920, Chapter 1, and adopted as the basis for taxation for the years 1920 to 1923, inclusive. Such property is assessed in North Carolina only quadrennially. The only power with reference to assessment of railroad properties prior to 1924 given to the Commissioner of Revenue by the Public Laws of 1921 was the power to review the State Tax Commission's assessment of railroad properties, given by the Machinery Act of 1921, Section 28 (*g*).

The said Section 65 of the Machinery Act of 1921, referred to, and the proviso thereof quoted, on page 10 of the complaint, is the statute particularly controlling the assessment for taxation
51 of the properties of railroads doing interstate commerce, operating both within and without the State of North Carolina.

Section 82 (6½) of the Revenue Act of 1921, referred to and quoted on pages 10 and 11 of the complaint, was first enacted by the General Assembly in the Extra Session of 1920, Public Laws 1920, Chapter 1, Section 7 (*d*), and was carried forward without change in the said Revenue Act of 1921. The said Section 82 (6½) was a substitute for Sections 77 and 78 of the Revenue Act of 1919, which imposed a privilege tax on railroads for the privilege of doing intrastate commerce within North Carolina, based on gross earnings per mile within the State. This tax levied by the said Sections 77 and 78 of the Revenue Act of 1919 had existed in the laws of North Carolina for many years, in addition to ad valorem taxation. The said Section 82 (6½) substituted for the old privilege tax based on gross earnings per mile a new form of privilege or franchise tax upon all railroads for the privilege of doing intrastate business within North Carolina, based on the total properties of each said railroad within the State as assessed under the Machinery Act for ad valorem property taxation.

Section 3 of the said Revenue Act, it is admitted, provides that no tax on any property in the State shall be levied for any of the uses of the State Government; and no tax on property is levied by any of the statutes of North Carolina for any of the uses of the State Government.

6. Answering the allegations of article six, the defendants admit that the ad valorem assessment of the plaintiff's properties in the State of North Carolina was $20,191,720, including both the strictly railroad properties apportionable to counties and the local properties lying off the right of way and locally assessed. It is admitted that in 1920 the State Tax Commission, under the Revaluation Act, increased the said assessment to $34,768,440, and that the plaintiff paid its taxes thereon to the State Treasurer under written protest, but it is denied that any just ground or reason for such protest existed. It is denied that the defendant Commissioner of Revenue made an assessment of the plaintiff's property for 1921, or
52 that he had any authority to make any such assessment under the laws of North Carolina prior to the year 1924. The 1920 assessment made by the State Tax Commission included the following items: apportionable railroad property assessed by the Commission, $34,081,500; property lying off the right of way and assessed by local assessors and reported by them to the State Tax Commission, $686,940. The total of these two items gave the amount of $34,768,440, above referred to. What the Commissioner of Revenue did for 1921 was to bring forward without change the 1920 assessment of apportionable railroad property of $34,081,500 and to add thereto the valuations of property off the right of way and locally assessed according to reports made to him by both the plaintiff and the local assessors. The reports of the local assessors and of the plaintiff were conflicting and confused, and the Commissioner of Revenue never has known, and does not now know, what the correct total value for 1921 of such property of the plaintiff locally assessed is. From the conflicting reports made to him he ascertained a tentative figure of $753,185, which, added to the said assessment of apportionable railroad property as carried over from 1920 of $34,081,500, gave the total of $34,834,685 referred to in article six of the complaint. It is denied that at the hearing had before the Commissioner of Revenue facts were adduced showing that the said valuation of $34,081,500 as carried over from 1920 for plaintiff's apportionable railroad property was in excess of the true "actual value" of the said property as the said term is defined in Section 28 (*e*) of the Machinery Act. Some showing was made by the plaintiff as to alleged incorrectness of the figure of $753,185 for property locally assessed, but no demonstration of what the correct amount for the said property should be was made, and accordingly the Commissioner of Revenue refused to make any reduction, either in the apportionable railroad property valuation or in the valuation of property locally assessed.

Upon the petition of the plaintiff for a further review by the State Board of Equalization, the Commissioner of Revenue, sit-
53 ting with the said board and as a member thereof, granted the application for the hearing, and after due consideration of the documents and the arguments and statements made, was of the opinion that the valuation of the plaintiff's apportionable railroad property theretofore made by the State Tax Commission, of $34,081,500, was correct for the year 1921 as well as for 1920, and

was fair and just; was further of the opinion that no showing as to the correct total valuation of its locally assessed property had been made by the plaintiff, and, with the advice and approval of the other members of the board, declined to change or reduce either of the same further.

It is admitted, however, that on or about November 21, 1921, the Commissioner of Revenue, convinced that, due to local reductions, the valuation of property of the plaintiff locally assessed for 1921 would not exceed that for 1920, or the sum of $686,940, tentatively reduced the said valuation from $753,185 to $686,940, pending further and more correct reports, which said reduction had the effect of reducing the total valuation of the sum of apportionable railroad property and of property locally assessed from $34,834,685 to $34,768,440.

It is denied that in making the allocations to the counties, cities, and towns, pursuant to Section 64 of the Machinery Act, the Commissioner used the value of $34,834,685. On the other hand, he apportioned to counties, cities, and towns only the valuation of the plaintiff's apportionable railroad property, to-wit, the sum of $34,081,500, first deducting the valuation of the property locally assessed. It is denied that the apportioning of the said value is erroneous or that it results in the apportionment to the counties and other local subdivisions of $66,245, or of any other amount, of value to which they are not entitled. The defendants aver that the only confusion or incorrectness in the valuation of plaintiff's property for taxation is that which arises from confusion in the returns of plaintiff and of local assessors as to property locally assessed, and that whether the correct valuation of the said property for 1921 is $753,185
54 as at first ascertained, or is $686,940 as afterward tentatively revised, or a greater or less figure, still no part of such valuation was apportioned to counties, cities, and towns by the Commissioner of Revenue and whenever the correct figures for the plaintiff's property locally assessed are ascertained the figure of $686,940 will be either reduced or increased to accord with the correct figures, and the total of $34,081,500 plus whatever is the correct figure for such property locally assessed will be revised accordingly. It is denied that the amount of $34,081,500, the assessment of plaintiff's apportionable railroad property, is in any way excessive or erroneous.

Prior to the commencement of this suit, the Commissioner of Revenue fully informed the plaintiff of his intention to allow on property locally assessed all reductions made in the respective counties under the Act of 1921, and that upon the ascertainment of the correct figures for assessments of plaintiff's property locally assessed he will certify to the State Auditor the necessary corrections in the valuation heretofore certified to him as the total ad valorem valuation of plaintiff's property, the basis for the calculation of the franchise or privilege tax.

7. It is admitted that the parts of statutes set out in article seven are correctly quoted, but it is denied that they or anything in the said article constitute any reason why the plaintiff's apportionable

railroad properties should not have been assessed at $34,081,500 as hereinbefore alleged. And the defendants aver that the said assessment is correct for 1921 as well as for 1920. As to the total of the said property plus the property of the plaintiff locally assessed, which total stands now tentatively at $34,768,440, the same is subject to revision to the extent of proper revisions in the said value of $686,940 therein contained, which will be made upon the ascertainment of the correct valuations of such property locally assessed.

It is admitted that the reductions set out and referred to on pages 20, 21 and 22 of the complaint were made by the respective county boards of review and by the said revaluations in Robeson and 55 Scotland Counties, were not revised or changed by the State Board of Equalization, and therefore became effective.

It is denied, however, that the Commissioner of Revenue declined to give the plaintiff the benefit of such reductions upon its real property as were allowed to other persons and corporations in every case in which the facts were correctly reported to him. The defendants aver that although such reductions were not applied to the right of way, lands and structures thereon, that is, to strictly railroad property assessed by the State Tax Commission and apportionable to the counties, they were, or were intended to be, applied to the property of the plaintff lying off the right of way and locally assessed, and not strictly railroad property, exactly as they were applied to other real estate. The Commissioner of Revenue has no means of knowing the local assessments of such property off the right of way, and the proper reductions thereon, except as the same are reported to him by the local assessors and by the plaintiff, as aforesaid. And the said reports have been confused and conflicting. Upon the facts being shown, the Commissioner of Revenue will allow upon the assessments of such property locally assessed the same reduction in each county as was made on other real estate in general in the respective county.

It is denied that facts were produced before the Commissioner of Revenue showing that the assessment against the plaintiff was unfair, discriminatory, would be taking the property of the plaintiff without due process of law, would be denying to it the equal protection of the law, was not uniform, was not in accordance with the said Chapter 38, Public Laws of 1921, or should be reduced in order to equalize the value of the plaintiff's property with that of other persons or corporations, or for any other reason. It is denied that the said assessment, or any act of the Commissioner of Revenue or of the State Tax Commission was unfair toward or discriminatory against the plaintiff, or was violative of any statute of North Carolina or any provision of the Constitution of the United States or the Constitution of North Carolina.

56 It is admitted that, as alleged in the complaint on pages 22-23, the property of the plaintiff was assessed in 1920 at its true value within the meaning of the tax statutes of North Carolina. It is denied, however, that the plaintiff's property in North Carolina should be assessed for taxation for 1921 at any lower valuation than

it was for 1920, except as to such correction as should be and will be made in property locally assessed as hereinbefore stated. It is denied that the conditions which brought about the reduction in the value of real estate in general in the counties wherein reductions in assessment thereon were made applied to plaintiff's apportionable railroad property. It is admitted that the deflation in property values was not confined to real estate of individuals but affected other real estate similarly situated, but it is denied that any such deflation affected or applied to the plaintiff's railroad property. As to the real estate of the plaintiff lying off the right of way, not strictly railroad property, and which was assessed by local assessors, the same conditions in general controlled as those which controlled the values of real estate in general, and the same reductions were or will be allowed the plaintiff on such property as were allowed to other real estate. It is admitted that the reductions or revaluations were not based upon the reduced value of any particular parcel of real estate, but were based upon general conditions applicable to real estate in general as such, but it is denied that those conditions applied to railroads and railroad property, that is property, real or personal, located on rights — way and devoted to the service of transporation. It is denied that the average reduction made in 1921 assessment of real property generally under the 1920 assessment by the counties traversed by its line is 22 per cent, and it is denied that plaintiff's 1921 assessment should have been reduced by that proportion under its 1920 assessment, or that any reduction should have been made under its 1920 assessment. As hereinbefore alleged the same reduction which was applied to real estate in general was or will be allowed the plaintiff on all of its real estate assessed by local assessors as real estate, and it is denied that the failure and refusal of the Commissioner of Revenue to grant the plaintiff a reduction in the
57 assessment of its apportionable railroad properties assessed as such, and not as real estate, by the State Tax Commission, corresponding with reductions allowed by counties on assessments of real estate as such, the same treatment being accorded to all railroads in the State in this respect, in any way constituted or resulted in discrimination against the plaintiff, and in any way contravenes Section 3 of Article V of the Constitution of North Carolina or denies the plaintiff the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States.

Further answering article seven, the defendants aver that the Revaluation Act, Public Laws, 1919, Ch. 84, was passed by the General Assembly of North Carolina for the purpose of making the tax laws of the State accord with Section 3 of Article V of the Constitution of North Carolina by making the ascertainment of the true value in money of all property in the State the basis of assessment for taxation. This law provided for a complete revaluation of all property, real, personal, and mixed, by local appraisers in the county, and of railroad properties by the State Tax Commission, this new valuation to be used as the basis for computing the ad valorem taxes for

the years 1920 to 1923 inclusive, when the same should be approved and the tax rates for the State revised by the General Assembly, and when the tax rates levied by counties, cities, towns, and special tax districts should be revised under rules to be laid down by the General Assembly.

The general revaluation of all property in the State was made pursuant to this act. Real estate in general in the State was raised about two hundred per cent, or tripled, in value above the assessments for 1919. Railroad properties in the State were raised by the State Tax Commission under the provisions of the said Revaluation Act only about one hundred per cent above the 1919 assessments. The assessment of the properties of the plaintiff in this State was raised under the said act only from $20,191,720 to $34,768,440, as alleged in the complaint, which is an increase over the 1919 assessment of only about 71 per cent, as against the
58 general increase in assessment of real estate in the State of 200 per cent. The said assessments made under the Revaluation Act were thereupon approved and adopted by the General Assembly at the Extra Session of 1920 (August), by Chapter 1 of the Public Laws of 1920, called the Revenue Act of 1920. By this statute the General Assembly adopted the revaluation assessment as the basis for the levy of taxes for the years 1920 to 1923 inclusive. This act, furthermore, revised the tax rates of the State and authorized and made the rules for the revision of tax rates by counties, cities, towns, and special tax districts, which revisions were actually made.

The defendants aver that the revaluation had been made at a time when farm products, farm land, and real estate in general were bringing in the market abnormally high prices which at the time were thought to be stable. A sharp period of depression, affecting particularly the values of such real estate and products, followed almost immediately after the said reassessment under the Revaluation Act and much real property fell in market value below the value at which it had been assessed under the revaluation. It is denied, however, that the 1920 assessment of railroad properties in the State under the Revaluation Act was made at a time when such property was abnormally high, as other property was, and it is denied that any such depression in the market values of railroad system properties followed the said revaluation.

As a result of the condition above described as applied to farm lands and other real estate in general, there was enacted in the Machinery Act of 1921, Section 28 (*a*) thereof, as quoted in article seven of the complaint, which provided that county boards of commissioners and county boards of appraisers and review, appointed under the Revaluation Act, should sit together jointly as county boards of review to determine if the valuation of real estate in the counties as a whole, as made under the Revaluation Act, was in excess of the fair value of such property at the time of meeting of the said boards of review. It provided that if it should be found that the assessments of real estate were thus excessive, the boards of

review should find the average percentage of excess for their
59 respective counties and report the same to the State Tax Commission. It provided that the valuation as assessed under the Revaluation Act and as reduced by this average percentage of reduction should be the value at which property should be assessed for taxation unless and until changed by the State Tax Commission.

The county boards of review in sixty-seven counties in the State, after due consideration, decided to make reductions and report the same to the State Board of Equalization, pursuant to these provisions. The assessments of value which had been made under the Revaluation Act were reduced by these percentages and the resulting assessments became the assessments for taxation of real estate in general in those counties. Plaintiff's properties lying off the right of way, and which were therefore assessed by local assessors as other real estate, and by them reported to the State Board of Equalization, were or will be reduced proportionately along with all other real property in those counties in which such property of the plaintiff was situated and such reductions made, and these reductions were or will be allowed.

Inasmuch as real property in general had been raised by the revaluation assessment to three times the former assessment, or an increase of 200 per cent, and the assessment of the plaintiff's property by the State Tax Commission for 1920 was an increase of only 71 per cent above the former assessment; and inasmuch, therefore, as the assessments of real estate in general for 1920 were in excess of their true market value in 1921, and the assessments of railroad properties, and particularly that of the plaintiff, for 1920 were not in excess of, but were at, their true value for 1921, the Commissioner of Revenue properly refused to make reductions of the said assessment of strictly railroad system property of the plaintiff to correspond with the cuts made by the county boards of review on real estate in general, including real estate of railroads, and of the plaintiff, lying off the right of way and locally assessed.

The defendants further aver that while the chief agricultural products of this State decreased in value in the latter part of
60 1920 and in 1921 more than 300 per cent, the freight rates of the plaintiff and other railroads were increased 25 per cent and their passenger rates were increased 20 per cent. The railroads continued to move the same volume of crops, and, although the market price of these crops had so fallen that the farmers and landowners suffered disastrous losses, and the values of land in general fell rapidly and sharply in the market, the railroads received higher compensation for moving the said crops and other subjects of commerce, and the values of railroad properties devoted to transportation suffered no such decline as did the values of real estate as such.

As hereinbefore stated, under the Revaluation Act the assessment of real estate in general in the State for 1920 was about three times that for 1919, or an increase of 200 per cent in round numbers, as showing which reference is hereby made to Exhibit "A" attached hereto. For the counties through which the plaintiff's lines run in

this State, those named in the table on pages 21 and 22 of the complaint, the assessments of real estate in general for 1920 were an increase of 289 per cent over those for 1919. After allowing the percentages of reduction alleged by the plaintiff, the assessments of real estate in general for 1921 in those counties were still an increase of 185 per cent over the 1919 assessments. The assessments of the plaintiff's railroad properties in this State for 1920, under the revaluation, was, as hereinbefore alleged, an increase of only 71 per cent over that for 1919, and the assessment of the said properties as carried forward by the Commissioner of Revenue for 1921 is an increase of only 71 per cent over that for 1919, as compared with the 1921 assessments of real estate in general in the counties through which plaintiff's line runs, which total an increase of 185 per cent over the assessments for 1919 even after allowing the percentages of reduction of which the plaintiff complains as being discriminatory against it. After allowing the said reductions, it still remains, therefore, that real estate in general stands at an increased valuation very much greater in comparison with the 1919 assessment
61 than the increased valuation on the plaintiff's property. It is impossible, therefore, that there can have been any discrimination against the plaintiff.

The following table is inserted as showing this. The table gives figures for those counties referred to on pages 21 and 22 of the complaint, being those through which the plaintiff's lines run. For each of these counties there is given the total assessment of real estate in general for 1919, the same for 1920 as increased under the revaluation, the percentage of reduction allowed on the 1920 assessment pursuant to the Act of 1921, and the resulting total assessment of real estate in general in the county for 1921. The totals show that real estate in general in these counties was subjected to an increase of 289 per cent in valuation for 1920 over that for 1919, and that even after allowing the 1921 reductions the assessment of such property for those counties for 1921 still remained an increase of 185 per cent over that for 1919.

County.	1919.	1920.	Percentage reduction.	1921.
Anson	$4,379,115	$13,379,115	20	$10,703,292
Bertie	4,055,859	13,958,780	25	10,469,086
Bladen	3,505,259	11,630,040	15	9,885,534
Chatham	4,082,437	11,813,037	25	8,859,778
Cleveland	7,574,843	28,158,726	15	23,934,917
Durham	14,777,121	43,426,807	25	32,570,135
Franklin	4,607,194	16,594,580	40	9,956,748
Gaston	11,302,506	52,344,289	25	39,258,217
Granville	4,324,641	16,088,145	33⅓	10,725,430
Halifax	8,675,643	35,636,872	40	21,382,123
Lee	2,735,378	8,706,469	33⅓	5,808,313
Lincoln	3,446,982	12,584,088	25	9,438,066
Mecklenburg	23,133,825	93,500,878	25	70,125,659
Northampton	4,463,235	12,367,534	33⅓	8,245,023
Rutherford	4,331,111	19,912,642	10	17,921,378
Union	5,092,979	21,444,971	25	16,083,728
Vance	4,550,421	17,856,566	33⅓	11,904,377
Warren	3,556,222	12,373,446	33⅓	8,248,964
Robeson	9,063,675	48,024,939	40	28,814,963
Scotland	3,661,138	21,319,716	1.1	21,085,199
Totals	$131,359,584	$511,121,682	....	$375,416,930
Seaboard Air Line Railway Co.	$20,191,720	$34,768,440	....	$34,768,440

62 The foregoing figures for the plaintiff, placed under the table for comparison, use the tentative sum of the apportionable property assessment of $34,081,500 and of the property locally assessed, it being understood that as to the property locally assessed the same is subject to revision in accordance with proper showing of fact, as hereinbefore alleged.

The defendants deny that the value of the plaintiff's railroad system properties in North Carolina depends upon or follows the fluctuating values of real estate in general as affected by temporary advances and declines. They aver that the causes which produced a rapid and abnormal inflation of values of real estate in general just before the revaluation in 1920 and which produced the sharp deflation of those values thereafter, did not apply to railroad system properties, and that such property of the plaintiff, assessable under the North Carolina tax laws by the State Tax Commission, and apportionable to counties and other subdivisions, has not fallen in value below its value in 1920. The plaintiff is not, therefore, entitled to any reduction in its total assessment for ad valorem taxation of $34,768,440, which the plaintiff itself alleges was the correct assessment for 1920, except as to such revision of the value of property locally assessed included therein as may be proper on account of changes in or reductions in the assessment of such property, and

such revision will be made during the course of this litigation upon a proper showing of fact requiring same. The failure to apply to the assessment of $34,081,500 of plaintiff's apportionable railroad property any such reduction as was made in the counties named, on real estate in general, including that of the plaintiff locally assessed, is no discrimination against the plaintiff, violates no part of the statutory law or of the Constitution of North Carolina, and violates no part of the Constitution of the United States.

8. Answering the allegations of article eight, the defendants deny that the Commissioner of Revenue assessed the plaintiff's property or that the said Machinery Act or any other act gave him any
63 authority to make an assessment at any time prior to 1924. As hereinbefore alleged the Commissioner of Revenue brought forward without change for 1921 the assessment of plaintiff's apportionable railroad property made by the State Tax Commission for 1920 of $34,081,500, and added to the figures reported to him as valuations of property of the plaintiff locally assessed. It was only in the value of such property locally assessed that a change was made by the Commissioner of Revenue. The defendants aver that under Sections 4 and 82 (6½) of the Revenue Act there will be levied against the plaintiff taxes in the amount of one-tenth of one per cent of the sum of the assessment of the plaintiff's apportionable railroad property, $34,081,500, plus whatever is found to be the correct total assessment for 1921 of its property locally assessed. It is denied that the Commissioner of Revenue has allocated or apportioned to counties, cities, and towns the valuation of $34,834,685, or any other valuation than that of the plaintiff's apportionable property, to-wit, $34,081,500, as hereinbefore alleged. It is denied that the various counties, cities, towns, and other taxing subdivisions of North Carolina will, unless restrained from doing so, attempt to collect from the plaintiff taxes based upon their local rates of levy as applied to any erroneous or excessive valuation of the plaintiff's property. The amount apportioned was correct as hereinbefore alleged.

9. The allegations of article nine are denied. The defendants deny that the franchise tax imposed under authority of Section 82 (6½) of the said Revenue Act is a property tax or an ad valorem tax based on the value of the plaintiff's property in the State. It is averred that the said tax is an excise, franchise, or privilege tax imposed upon the privilege of doing a strictly intrastate business within the State of North Carolina; that the said excise, franchise, or privilege tax, being levied upon the plaintiff in addition to the ad valorem property tax levied by counties, cities, towns and special taxing districts, does not and cannot constitute double or unequal taxation and is violative neither of Section 3 of Article V of the Constitution of North Carolina nor of the Fourteenth
64 Amendment to the Constitution of the United States. It is denied that the said tax is not levied by a uniform rule and the defendants aver that it is uniformly imposed upon all subjects in the State comprised within the class upon which it is imposed,

and that such classification is reasonable, legal, and proper. It is denied that the said Section 82 (6½) imposes a tax upon the plaintiff's property without imposing a like tax upon the property of other owners, or that it is in any sense a property tax. The defendants aver that the said tax is imposed upon all railroads subject to the taxing power of North Carolina alike and upon all subjects falling within the class comprised within the statute imposing the tax. In addition the defendants aver that persons, individual and corporate, other than railroads, are subjected to similar taxes by other sections of Schedule C of the said Revenue Act, as, for instance, privilege tax on chair and sleeping cars imposed by Section 76, privilege tax on express companies imposed by Section 79, privilege tax on telegraph companies imposed by Section 80, privilege tax on telephone companies imposed by Section 81, franchise tax on corporations other than railroads imposed by Section 82, subsections other than (6½), and various other privilege and license taxes imposed upon individuals as well as corporations, all of which are in addition to property taxation. The said tax is not a property tax, however, but is a true franchise or privilege tax. It is denied that the uniformity rule is violated by the fact that as to all other corporations it is measured by the capital stock, while as to railroads it is based upon the ad valorem value of property for taxation. It is alleged that the placing of railroad companies in one class and of other corporations in another class, and the imposition of a franchise or privilege tax meassured by a percentage of the value of the total properties in the State on corporations of the first class, and the imposition of such a tax based on capital stock upon corporations of the second class, is a reasonable, legitimate, and perfectly justifiable classification,
65 and in no way violates the rule of uniformity prescribed by Section 3 of Article V of the Constitution of North Carolina, or the Fourteenth Amendment to the Constitution of the United States.

10. Answering the allegations of article ten, the defendants deny that Section 82 (6½) of the Revenue Act is unconstitutional and void and deny that it is violative of the scheme of taxation which the North Carolina Constitution contemplates. It is denied that under the said Revenue Act, or any sections thereof, the State derives its entire revenue from corporations. On the other hand that act, which imposes all the taxes from which are produced the revenue for the State Government and State purposes, imposes upon individuals a great variety of capitation, inheritance, license, occupation, privilege, and income taxes. That act not only exempts the property of individuals from taxation for purposes of providing State revenue, but also exempts the property of corporations from taxation for such purposes as well. The said act imposes no property taxes on either corporations or individuals. It is denied that the Legislature of North Carolina, by the passing of the said act or otherwise, has exempted a large class of property from liability to State taxation and recouped the loss of revenue thereby occasioned by imposing the entire burden upon the properties of corporations. The defendants aver that it is competent for the State of North Carolina to adopt a

policy of taxation; that by the Revenue Act and the Machinery Act of 1921 it has adopted a policy of raising the revenues for the support and maintenance of the subdivisions of the State by and through property taxes, and of raising the revenues for the support and maintenance of the State Government and for expenditures for State purposes by and through taxes other than taxes on property, to-wit, the various capitation, inheritance, license, occupation, privilege or franchise, and income taxes imposed by the Revenue Act, which are imposed both on corporations and individuals, with certain legitimate classifications, and which are all imposed uniformly upon all persons, individual or corporate, within the respective classifications.

66 It is denied that this policy or scheme of taxation is at variance with, or violates, the Constitution of North Carolina and it is denied that Section 82 (6½) of the Revenue Act imposes or attempts to impose any unequal or additional or illegal taxation burden upon the plaintiff or that it is void for any reason. It is denied that Section 82 (6½) imposes a tax on property of the plaintiff or that it denies to the plaintiff the equal protection of the law or deprives it of its property without due process of law, or violates the Fourteenth Amendment to the Constitution of the United States.

It is denied that under the scheme of taxation in existence in North Carolina the plaintiff is charged with an undue proportion of the expenses of the State Government, and it is denied that individual tax payers pay no State taxes, as alleged in the complaint. As hereinbefore alleged, individuals as well as corporations, contribute to the support of the State Government and to its revenues by the payment of the various taxes imposed by the said Revenue Act.

It is denied that the said Franchise Tax on railroads imposed by Section 82 (6½) is a tax upon the privilege of engaging in interstate commerce, or that it is unconstitutional and void as such, or that it violates the commerce clause of the Constitution of the United States. The defendants aver that the said tax is a privilege or franchise tax imposed upon all railroads, domestic and foreign, for the privilege of exercising their franchises in the State of North Carolina, that is, for the privilege of engaging in strictly intrastate commerce within the said State. They further aver that by reason of the fact that the said franchise or privilege tax is admeasured, not by any earnings from interstate commerce nor by any properties outside of North Carolina, but only by the total properties of the plaintiff within the State of North Carolina; the tax is in no way a burden upon interstate commerce; that it is not a tax for the privilege of engaging in interstate commerce, nor its payment made a condition precedent to the right to engage in such commerce, and that it violates no part of the Constitution of the United States or of the Constitution of North Carolina.

67 11. The allegations of article eleven are denied and it is denied that any excessive or erroneous assessment has been made against the plaintiff.

12. The allegations of article twelve are denied. The defendants aver that the tax imposed by the said Section 82 (6½) is not a

property tax and has no effect to bring about double taxation. They aver that it is entirely competent for the State of North Carolina to impose upon the plaintiff the said franchise or privilege tax in addition to ad valorem property taxation, and it is denied that the scheme of taxation imposed by the statutes of North Carolina takes the property of the plaintiff without due process of law or denies to it the equal protection of the law, or violates either the Fourteenth Amendment to the Constitution of the United States or Article V, Section 3, of the Constitution of North Carolina.

13. The truth of the first sentence of article thirteen is admitted. It is admitted that the railroad assessments prior to 1921 were fixed by a board of three, known as the State Tax Commission, but it is denied that under the laws of 1921 any assessment is or was fixed by the Revenue Commissioner or will be made by him until the year 1924. On the other hand, it is averred that the assessment made by the State Tax Commission in and for the year 1920 is and will be the only assessment of property of railroads in North Carolina to be made until 1924. The question of the right of the plaintiff to appeal from an assessment of its property cannot arise until the next quadrennial assessment is made in 1924. The same law which gave other tax payers the right to a review of the 1920 or revaluation assessment gave the railroads the same right of review before the Commissioner of Revenue, and the plaintiff was granted this right of review, as it alleges in its complaint.

The defendant further aver that under the laws and procedure of North Carolina, the writ of certiorari would lie at the suit of the plaintiff to the said Commissioner of Revenue from the Superior Court of that State and that by this writ the plaintiff may at any time take up for review and appeal any proceedings by the said Commissioner of Revenue in which its legal and constitu-
68 tional rights may be deemed to be violated. It is denied that anything in the tax laws of North Carolina constitutes a denial to the plaintiff of the equal protection of the law, or a violation of the uniformity clause of the Constitution of North Carolina.

The defendants further aver that the assessment of which the plaintiff is now complaining in its complaint is the assessment made by the former State Tax Commission and approved by the Legislature of 1920; that the Act of 1921 conferred upon the Commissioner of Revenue, upon the petition of the plaintiff, the power to review the assessment so made by the State Tax Commission and approved by the Legislature of 1920 as aforesaid; that the plaintiff did not appeal from, or in any way invoke an interference with, the assessment made by the State Tax Commission and approved by the Legislature in Extra Session in 1920, as aforesaid, but did in 1921 petition the Commissioner of Revenue to reduce the said assessment under the power conferred upon him by the Act of 1921; that, as hereinbefore stated, the said Commissioner of Revenue did decline to reduce the said assessment, and if the plaintiff felt itself aggrieved by this action of the Commissioner of Revenue, then it was competent for, and incumbent upon, the plaintiff to seek relief in the courts

of North Carolina; that the plaintiff could have made application to the Superior Court of the said State for a writ of certiorari to have the action of the Commissioner of Revenue in this manner reviewed, or could have sought injunction against the said Commissioner in such court, and could have thus had its grievances, if any, redressed.

14. It is admitted that the plaintiff will owe to the counties and municipalities the legally enacted tax upon whatever may be found to be the legal assessment of its property for taxes in the State of North Carolina. And the defendants aver that the said legal assessment for 1921 is the sum of the apportionable railroad property assessment of $34,081,500 plus whatever may be found to be the correct total assessment of property locally assessed, as hereinbefore stated. The defendants further aver that the plaintiff will
69 owe to the State the franchise or privilege tax of one-tenth of one per cent upon the said sum.

15. Answering the allegations of article fifteen, the defendants deny that the plaintiff has no remedy provided by the North Carolina Statutes to contest the validity of a tax payable direct to the State Treasurer other than a suit for injunction; they aver that the writ of certiorari would lie for such purpose as hereinbefore alleged and that the plaintiff has an adequate remedy at law of which it has not availed itself. It is denied that this suit is brought because the plaintiff has no adequate remedy at law. It is denied that unless the defendants be joined herein the plaintiff will be required to institute a number of suits. It is denied that unless the defendants are restrained they will proceed to collect any tax on any illegal assessment. And it is denied that the taxes due by the plaintiff will become a cloud upon the title to the property of the plaintiff against which equity should afford any relief. The defendants aver that the taxes of which the plaintiff complains are legal, and the lien thereof is legal.

70 *Prayer.*

Wherefore, The defendants, having fully answered the complaint filed in this suit, pray the Court that every and singular the prayers of the said complaint be denied and that the same be dismissed at the costs of the plaintiff.

JAMES S. MANNING,
Attorney-General of North Carolina.
FRANK NASH,
Asst. Attorney-General of North Carolina.
Solicitors for the Defendant.

WILLIAM P. BYNUM,
GEORGE H. BROWN,
LOCKE CRAIG,
THOMAS D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel.

A. D. Watts, being duly sworn, says that he is one of the defendants in the above entitled suit, that he has read the foregoing answer to the complaint, and that it is true, of his own knowledge, except as to matters therein stated on information and belief, and as to them he believes it to be true.

A. D. WATTS.

Sworn to and subscribed before me this — day of November, 1921.

W. P. STACY,
Associate Justice N. C. Supreme Court.

960

Comparative Statement of Taxable Values for the Years 1919 and 1920, Showing Number of Acres of Land, Value of Timber, Manufacturing, Mineral, and Quarry Properties, Average Value per Acre, Value of Town Lots, Value of Real Estate, Value of Personal Property, and the Aggregate Value of Real and Personal Property Listed with County Supervisors.

(NOTE.—This statement does not include railroad and public service corporations, banks, and corporate excess assessed by the State Tax Commission.)

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Alamance, 1919.....	257,742	$2,786,845	$10.81	$2,058,055	$6,844,638	$5,532,968	$11,377,606
Alamance, 1920.....	262,836	9,966,036	37.92	7,159,464	24,934,832	10,537,710	35,472,542
Alexander, 1919.....	157,970	1,283,419	8.12	194,050	1,667,975	1,615,101	3,283,076
Alexander, 1920.....	165,761	4,864,885	29.30	681,423	6,527,000	1,956,886	8,483,886
Alleghany, 1919.....	143,300	957,833	6.68	28,343	996,054	940,622	1,936,676
Alleghany, 1920.....	147,001	5,383,189	36.62	83,210	5,383,189	1,465,520	6,848,709
Anson, 1919.....	328,634	2,663,408	8.11	964,020	4,379,115	3,781,961	8,161,076
Anson, 1920.....	329,715	10,529,114	31.93	2,855,697	13,384,811	6,831,284	20,216,095
Ashe, 1919.....	268,508	2,094,573	7.80	73,833	2,172,551	2,555,766	4,728,317
Ashe, 1920.....	272,678	12,360,480	45.33	322,432	12,731,463	3,917,513	16,648,976
Avery, 1919.....	113,053	1,059,508	9.37	128,961	1,571,789	672,046	2,243,835
Avery, 1920.....	130,932	3,863,827	29.51	308,197	4,793,754	1,133,928	5,927,682
Beaufort, 1919.....	379,913	3,422,611	9.00	2,534,192	6,365,173	4,231,976	10,597,149
Beaufort, 1920.....	396,759	24,325,213	61.31	4,238,253	29,207,006	8,462,799	37,669,805
Bertie, 1919.....	450,883	3,040,339	6.74	862,130	4,055,859	3,467,887	7,523,746
Bertie, 1920.....	400,557	9,629,044	24.00	2,259,976	13,958,782	5,301,677	19,260,459
Bladen, 1919.....	502,723	2,655,945	5.28	287,732	3,545,259	2,250,967	5,796,226
Bladen, 1920.....	524,585	10,092,335	19.24	794,790	11,630,040	3,418,325	15,048,365
Brunswick, 1919.....	476,230	2,406,552	5.05	490,048	2,896,600	1,640,498	4,537,098
Brunswick, 1920.....	502,593	5,477,845	10.90	970,035	7,953,027	2,017,305	9,970,332
Buncombe, 1919.....	312,643	6,664,587	21.32	13,484,771	21,862,308	9,232,489	31,094,797

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Buncombe, 1920	.....	.....	....	.....	60,319,591	17,442,518	77,762,109
Burke, 1919	297,084	2,445,419	8.23	883,211	3,651,492	2,318,258	5,969,750
Burke, 1920	316,304	7,164,477	22.65	1,932,615	11,047,772	4,793,304	15,841,076
Cabarrus, 1919	208,079	2,213,175	10.64	1,734,076	6,729,195	5,406,793	12,135,988
Cabarrus, 1920	222,036	9,964,995	44.88	6,185,440	30,211,743	15,069,837	45,281,580
Caldwell, 1919	227,055	1,809,693	7.97	669,221	3,502,721	2,142,059	5,644,780
Caldwell, 1920	258,296	7,792,632	30.17	2,896,422	13,257,242	4,458,020	17,715,262
Camden, 1919	145,857	1,083,289	7.42	58,607	1,288,061	672,329	1,960,390
Camden, 1920	149,262	3,587,989	24.04	121,547	3,736,356	846,591	4,582,947
Carteret, 1919	239,554	1,703,631	7.11	1,056,084	2,993,060	1,586,379	4,579,439
Carteret, 1920	233,162	7,972,149	34.19	1,650,790	10,405,339	2,940,095	13,345,434
Caswell, 1919	262,748	1,686,517	6.42	116,680	1,803,197	2,188,466	3,991,663
Caswell, 1920	268,746	8,743,808	32.54	309,340	9,053,148	2,920,697	11,973,845
Catawba, 1919	256,932	2,460,000	9.58	1,604,830	4,692,916	5,370,515	10,063,431
Catawba, 1920	254,423	12,339,008	48.50	7,735,670	26,677,188	9,357,453	36,034,641
Chatham, 1919	404,913	3,063,242	7.04	504,565	4,082,437	3,551,644	7,644,081
Chatham, 1920	435,773	10,063,328	23.09	1,243,459	11,813,037	4,594,017	16,407,054
Cherokee, 1919	273,738	2,115,327	7.42	717,719	2,833,046	1,690,555	4,523,601
Cherokee, 1920	303,762	3,045,638	10.03	871,876	4,264,124	2,331,748	6,595,872
Chowan, 1919	99,967	1,159,788	11.60	582,677	2,007,621	1,778,608	3,786,229
Chowan, 1920	110,499	4,410,953	39.92	2,412,177	6,823,130	3,594,041	10,417,171
Clay, 1919	126,778	743,216	5.86	22,361	808,427	425,462	1,233,889
Clay, 1920	170,813	2,106,635	12.33	47,580	2,154,215	693,421	2,847,636
Cleveland, 1919	278,395	3,827,884	13.75	1,520,971	7,574,843	4,909,563	12,484,406
Cleveland, 1920	277,843	16,422,057	59.11	4,554,698	28,158,726	11,168,356	39,327,082
Columbus, 1919	458,631	3,429,666	7.48	822,207	4,922,220	4,061,355	8,983,575
Columbus, 1920	.....	.....	....	.....	15,789,229	6,600,000	22,389,229
Craven, 1919	364,212	2,421,364	6.65	4,864,543	7,617,220	4,097,447	11,714,673

Craven, 1919	364,212	2,421,364	6.65	4,364,543	7,617,226	4,697,447	11,714,673
Craven, 1920	323,112	15,488,629	47.94	13,256,829	28,745,458	9,352,424	38,097,882
Cumberland, 1919	338,497	3,116,070	9.21	2,513,375	6,348,011	4,990,251	11,338,262
Cumberland, 1920	358,317	12,835,535	35.82	7,393,804	20,522,039	7,567,734	28,089,773
Currituck, 1919	148,426	1,513,584	10.20	.....	1,733,291	705,677	2,438,968
Currituck, 1920	125,080	4,541,124	36.30	.....	4,541,124	1,033,871	5,574,995
Dare, 1919	208,400	494,859	2.37	100,929	626,963	301,642	928,605
Dare, 1920	.....	.....	....	.....	2,282,743	593,808	2,876,551
Davidson, 1919	35,442	.....	....	.....	6,957,305	3,806,554	10,763,859
Davidson, 1920	355,066	15,295,793	....	6,611,775	30,638,102	9,691,903	40,330,005
Davie, 1919	160,640	1,529,050	9.52	358,529	2,294,469	3,043,548	5,338,017
Davie, 1920	162,798	7,224,899	44.00	2,753,491	9,978,390	3,939,443	13,917,833
Duplin, 1919	449,760	3,689,316	8.20	850,138	4,723,287	4,976,607	9,699,894
Duplin, 1920	457,279	23,071,185	50.45	1,100,364	24,211,549	7,285,518	31,497,067
Durham, 1919	178,534	3,569,232	19.99	8,021,399	14,777,121	20,808,813	35,585,934
Durham, 1920	182,608	9,530,019	52.19	19,560,602	43,426,847	66,651,182	110,078,029
Edgecombe, 1919	303,562	4,131,420	13.60	3,036,247	7,867,565	7,415,180	15,282,745
Edgecombe, 1920	309,497	24,897,646	80.44	10,054,910	34,955,056	10,256,906	45,211,962
Forsyth, 1919	230,680	2,871,776	12.45	9,546,925	14,234,803	22,223,137	36,457,990
Forsyth, 1920	237,190	13,961,294	58.86	21,757,422	72,197,173	64,402,548	136,599,721
Franklin, 1919	303,215	3,082,712	10.16	1,482,479	4,607,194	4,565,486	9,172,680
Franklin, 1920	301,008	14,667,266	48.73	1,927,314	16,594,580	6,167,700	22,762,367
Gaston, 1919	201,263	2,648,515	13.16	2,807,246	11,302,506	8,192,666	19,495,172
Gaston, 1920	211,528	14,233,409	67.29	11,767,733	52,344,289	22,745,959	75,090,248
Gates, 1919	196,651	1,830,440	9.31	136,799	1,986,648	1,433,647	3,420,295
Gates, 1920	158,145	5,250,857	33.20	326,225	5,631,242	1,663,562	7,294,894
Graham, 1919	177,414	984,505	5.55	28,350	2,132,988	599,954	2,732,942
Graham, 1920	195,803	2,106,480	10.76	46,350	4,869,736	1,337,240	6,206,976
Granville, 1919	319,516	2,839,542	8.88	1,267,086	4,324,621	4,571,084	8,895,705
Granville, 1920	334,774	9,515,391	38.20	3,463,640	16,088,145	6,775,885	22,864,030
Greene, 1919	159,369	1,946,611	12.21	295,283	2,250,882	3,391,246	5,642,128
Greene, 1920	159,276	13,358,939	83.87	984,687	14,343,626	5,666,466	20,010,092
Guilford, 1919	393,239	6,646,810	16.90	9,183,654	18,884,912	12,058,586	30,943,498
Guilford, 1920	394,318	20,889,651	52.98	22,906,580	85,158,132	30,894,441	116,052,573
Halifax, 1919	409,577	4,404,845	10.75	2,349,656	8,675,643	10,385,714	19,061,357
Halifax, 1920	425,386	16,359,967	38.22	6,436,375	35,636,872	12,536,587	48,173,459
Harnett, 1919	353,154	3,077,468	8.65	740,537	4,742,889	5,425,881	10,168,771

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Harnett, 1920	346,418	14,418,178	41.62	3,514,044	20,823,234	8,165,342	28,988,576
Haywood, 1919	321,154	3,037,607	9.45	1,779,507	6,120,975	2,762,717	8,883,692
Haywood, 1920	343,881	10,960,771	31.87	4,024,593	17,326,364	6,080,935	23,407,299
Henderson, 1919	199,895	2,150,723	10.86	1,862,495	4,173,152	1,881,099	6,054,251
Henderson, 1920	195,716	4,689,786	23.00	3,796,873	11,322,157	3,101,037	14,423,194
Hertford, 1919	204,576	2,118,831	10.36	629,451	2,840,986	3,090,703	5,931,869
Hertford, 1920	201,537	8,738,122	43.36	1,991,046	10,747,168	3,609,665	14,356,833
Hoke, 1919	224,703	2,129,767	9.48	300,364	2,653,091	2,020,935	4,674,026
Hoke, 1920	221,230	9,967,460	45.05	944,313	11,244,263	2,995,910	14,240,173
Hyde, 1919	275,961	1,540,190	5.58	40,230	1,619,250	1,071,108	2,690,358
Hyde, 1920	420,604	11,837,110	28.14	443,911	12,281,021	2,035,801	14,316,822
Iredell, 1919	363,920	3,754,812	10.32	2,726,620	7,376,308	6,785,263	14,161,571
Iredell, 1920	364,507	15,358,713	42.63	6,728,014	26,500,459	10,117,767	36,618,226
Jackson, 1919	291,748	1,555,849	5.33	188,013	2,168,624	1,993,645	4,162,269
Jackson, 1920	319,180	6,068,768	19.01	222,843	6,608,611	3,149,193	9,757,804
Johnston, 1919	481,735	5,092,429	10.57	1,973,354	7,912,383	10,322,128	18,234,511
Johnston, 1920	498,946	32,620,897	65.38	7,092,072	42,030,148	15,477,315	57,507,463
Jones, 1919	291,477	1,666,958	5.72	260,788	1,969,921	1,378,496	3,348,417
Jones, 1920	294,634	7,585,777	25.75	712,063	8,447,840	2,255,143	10,702,983
Lee, 1919	155,733	1,467,390	9.42	926,313	2,735,378	2,144,202	4,679,580
Lee, 1920	163,139	6,712,698	41.15	1,019,819	8,706,469	3,371,944	12,078,413
Lenoir, 1919	222,375	2,205,289	9.92	2,329,826	4,859,933	5,518,123	10,378,056
Lenoir, 1920	239,868	20,753,505	86.52	11,629,585	33,857,010	10,910,400	44,767,410
Lincoln, 1919	179,225	2,119,195	11.82	586,071	3,446,982	4,256,437	7,703,419
Lincoln, 1920	193,391	7,504,532	38.80	2,009,709	12,584,088	5,417,219	18,001,307
Macon, 1919	260,925	1,490,137	5.71	406,713	2,006,353	1,293,125	3,299,478
Macon, 1920	275,716	5,011,888	18.18	189,631	5,201,469	1,330,869	6,532,338
Madison, 1919	262,922	2,108,684	8.02	302,207	3,241,892	2,617,167	5,858,559

Madison, 1920	278,983	7,576,333	27.16	791,445	8,367,778	2,775,922	11,143,700
Martin, 1919	267,953	2,956,812	11.13	941,390	4,116,229	4,768,842	8,885,071
Martin, 1920	287,276	12,848,746	44.72	2,699,065	15,613,311	6,799,760	22,413,071
McDowell, 1919	254,751	.....	....	.....	2,675,983	1,042,136	3,718,119
McDowell, 1920	241,210	2,814,834	11.67	1,540,981	8,139,746	3,861,589	12,001,385
Mecklenburg, 1919	313,806	4,032,705	12.85	13,112,770	23,133,825	15,082,064	38,217,889
Mecklenburg, 1920	314,277	14,423,868	67.31	56,054,830	93,500,878	33,585,655	127,086,533
Mitchell, 1919	128,935	718,301	5.57	76,756	795,057	650,049	1,445,106
Mitchell, 1920	138,372	4,027,771	29.11	278,203	4,340,208	1,133,117	5,473,325
73 Montgomery, 1919	288,986	1,766,532	6.11	629,642	2,858,839	2,478,702	5,337,541
Montgomery, 1920	289,109	5,090,834	17.60	1,738,731	6,830,165	3,091,370	9,921,535
Moore, 1919	415,165	3,178,355	7.65	1,871,452	5,434,221	3,005,237	8,439,458
Moore, 1920	401,486	8,004,405	19.93	5,240,261	15,604,749	5,224,372	20,829,121
Nash, 1919	335,415	3,878,799	11.50	3,219,117	7,865,680	8,391,768	16,257,448
Nash, 1920	323,886	20,867,100	67.82	9,818,482	36,300,096	12,130,528	48,430,624
New Hanover, 1919	92,962	2,100,440	22.59	10,087,280	14,941,453	5,406,709	20,348,162
New Hanover, 1920	114,132	3,171,311	28.05	14,309,005	37,517,377	12,528,021	50,045,398
Northampton, 1919	318,278	3,705,130	11.64	623,790	4,463,235	4,436,914	8,900,149
Northampton, 1920	331,152	11,257,234	33.99	1,110,300	12,367,534	4,772,232	17,139,766
Onslow, 1919	342,132	2,846,648	8.32	489,741	4,772,360	2,651,357	7,423,717
Onslow, 1920	416,808	7,308,697	20.69	992,565	10,807,997	2,756,647	13,564,644
Orange, 1919	241,018	1,951,875	7.78	1,051,230	3,916,209	3,078,757	6,994,966
Orange, 1920	244,404	7,866,281	32.19	2,219,764	10,086,045	6,222,234	16,308,279
Pamlico, 1919	197,344	1,291,248	6.51	217,596	1,519,204	832,713	2,351,917
Pamlico, 1920	190,034	4,008,264	21.09	457,130	5,546,213	1,410,210	6,956,423
Pasquotank, 1919	148,427	1,678,547	11.31	2,136,000	4,120,322	2,922,259	7,042,581
Pasquotank, 1920	137,882	5,016,537	33.04	2,984,095	13,421,447	5,980,231	19,401,678
Pender, 1919	309,026	1,801,116	5.83	241,571	2,219,798	1,616,117	3,835,915
Pender, 1920	451,802	7,307,962	16.17	633,713	8,492,798	2,019,023	10,511,821
Perquimans, 1919	151,630	1,431,991	9.44	473,929	2,009,068	1,684,783	3,693,851
Perquimans, 1920	135,126	4,579,632	33.89	1,035,330	5,739,609	2,359,005	8,098,714
Person, 1919	248,726	1,907,348	7.67	491,389	2,633,069	2,368,806	5,001,875
Person, 1920	254,630	10,097,690	39.65	1,751,638	12,452,278	3,624,517	16,070,795
Pitt, 1919	377,008	4,386,655	11.64	2,896,842	7,464,487	8,655,875	16,120,362
Pitt, 1920	395,113	33,378,935	87.54	10,810,632	44,254,598	17,617,391	61,871,989
Polk, 1919	131,161	1,031,414	7.86	630,604	1,662,018	759,328	2,421,346
Polk, 1920	130,925	3,221,221	24.61	403,878	5,043,541	3,691,363	8,734,904

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Randolph, 1919	450,446	3,426,965	7.61	1,189,826	5,390,639	4,514,894	9,905,333
Randolph, 1920	489,717	13,352,406	27.27	2,842,531	18,468,305	7,049,532	25,517,837
Richmond, 1919	271,037	1,733,510	6.39	1,610,266	5,067,210	3,581,552	8,648,762
Richmond, 1920	298,155	8,335,941	28.63	5,335,137	18,450,390	8,000,022	26,450,412
Robeson, 1919	508,290	5,661,400	11.14	2,326,580	9,063,675	8,063,294	17,126,969
Robeson, 1920	544,258	41,507,181	76.23	3,410,336	48,024,939	16,401,672	64,426,611
Rockingham, 1919	345,078	3,213,287	9.08	2,215,162	8,399,673	7,917,904	16,317,477
Rockingham, 1920	354,743	20,502,620	57.79	17,139,898	47,813,378	24,561,986	72,375,364
Rowan, 1919	315,694	3,506,437	11.11	4,975,488	9,727,065	6,753,857	16,480,922
Rowan, 1920	319,701	14,383,945	46.00	14,703,488	38,548,806	8,802,070	47,350,876
Rutherford, 1919	323,305	2,660,608	8.23	635,344	4,331,111	3,204,275	7,535,386
Rutherford, 1920	326,699	12,869,438	39.33	717,300	19,912,642	8,824,619	28,737,261
Sampson, 1919	530,046	3,850,395	7.26	678,681	4,539,778	4,864,205	9,403,983
Sampson, 1920	578,092	16,169,478	28.00	2,181,805	22,717,990	9,305,331	32,023,240
Scotland, 1919	190,468	2,194,402	11.52	708,682	3,661,138	2,732,179	6,393,317
Scotland, 1920	190,381	15,478,175	81.30	3,520,521	21,319,716	7,693,755	29,013,471
Stanley, 1919	228,929	1,794,885	7.84	1,109,296	4,727,603	3,983,469	8,711,172
Stanley, 1920	245,668	10,574,057	43.04	3,745,636	21,225,000	10,608,893	31,833,893
Stokes, 1919	274,915	2,364,379	8.60	212,216	2,618,965	3,512,301	6,131,266
Stokes, 1920	286,724	10,328,827	36.02	544,334	10,873,161	4,310,595	15,183,756
Surry, 1919	330,406	3,850,503	11.65	1,737,885	5,796,250	5,375,888	11,172,138
Surry, 1920	347,849	13,476,044	38.72	5,053,375	18,529,419	7,845,186	26,374,605
Swain, 1919	346,039	2,275,531	6.56	348,794	2,657,925	1,908,527	4,566,452
Swain, 1920	346,196	6,057,460	17.49	596,960	6,830,920	2,619,045	9,449,965
Transylvania, 1919	197,595	1,518,091	7.68	382,984	2,044,250	1,308,115	3,352,365
Transylvania, 1920	198,554	4,684,341	23.59	462,625	5,304,466	2,597,049	7,901,515
Tyrrell, 1919	192,927	974,680	5.05	117,342	1,105,114	645,502	1,750,616
Tyrrell, 1920	169,491	2,917,151	17.21	235,845	3,152,996	1,069,834	4,222,830

Union, 1919	389,203	2,975,210	7.65	1,714,833	5,092,979	6,205,125	11,298,104
Union, 1920	392,429	15,605,830	39.77	4,671,356	21,444,971	10,172,675	31,617,646
Vance, 1919	161,724	2,103,131	13.00	1,776,205	4,550,421	5,579,165	10,121,596
Vance, 1920	167,208	9,428,756	56.39	5,553,505	17,856,566	8,662,735	26,519,301
Wake, 1919	531,678	5,703,809	10.73	11,038,122	19,342,872	12,302,850	31,645,722
Wake, 1920	506,877	23,181,356	45.73	25,987,726	53,739,885	18,726,589	73,900,221
Warren, 1919	255,618	2,568,511	10.49	875,602	3,556,222	3,828,467	7,384,689
Warren, 1920	277,193	10,277,899	36.89	1,926,632	12,373,446	4,851,406	17,224,852
Washington, 1919	200,868	1,586,739	7.90	501,569	2,180,780	1,556,516	3,737,296
Washington, 1920	136,375	6,118,254	26.88	1,010,540	7,468,873	2,231,456	9,700,329
Watauga, 1919	207,881	1,632,998	7.85	140,420	1,773,418	1,938,899	3,712,317
Watauga, 1920	217,097	6,750,358	31.09	501,234	8,820,897	2,419,708	11,240,605
Wayne, 1919	340,735	3,771,064	11.07	4,026,567	8,449,151	9,173,853	17,623,004
Wayne, 1920	339,270	27,607,644	81.37	14,860,093	47,323,132	17,666,582	64,989,714
Wilkes, 1919	467,528	2,991,286	6.40	668,155	3,780,058	3,014,511	6,794,569
Wilkes, 1920	469,130	7,999,140	17.05	880,767	12,352,003	4,357,959	16,709,962
Wilson, 1919	223,631	2,866,661	12.82	3,109,243	6,323,509	9,005,000	15,328,509
Wilson, 1920	236,077	26,715,771	113.17	13,685,529	40,401,300	20,069,562	60,470,862
Yadkin, 1919	211,977	1,909,500	9.43	218,745	2,233,845	1,926,589	4,160,434
Yadkin, 1920	212,459	8,992,113	42.32	659,503	9,651,616	2,772,947	12,424,563
Yancey, 1919	174,935	1,142,880	6.53	83,079	1,335,074	1,204,819	2,539,893
Yancey, 1920	184,300	6,981,404	37.88	126,724	7,144,065	2,583,189	9,727,254

74 *Affidavit of W. L. Stanley.*

Filed Jan. 7, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY CO.

v.

A. D. WATTS, Commissioner of Revenue, and Others.

Complainant's Affidavits in Support of Bill of Complaint.

Affidavit of W. L. Stanley, General Attorney, in Charge of Taxation for Seaboard Air Line Railway Company.

STATE OF GEORGIA,
County of Fulton:

This day personally appeared before me, C. L. Chappell, a Notary Public in and for the State and County aforesaid, W. L. Stanley, who after being sworn, stated that he is General Attorney of the Seaboard Air Line Railway Company; that his duties include the making of returns to enable the authorities of the several states the Seaboard traverses to assess the value of the property of the Seaboard Air Line Railway Company for taxing purposes, of which work he has been in charge for approximately sixteen years; that this duty necessitates a general knowledge of the values of property, and especially that of railroad property, as well as familiarity with the business of the Seaboard Air Line Railway Company, its earnings, volume of traffic, operating expenses and the like; that he has made a study of the values and assessments made by the officials of North Carolina; that examination of the records in North Carolina indicates that the assessment of real property other than railroads in the twenty-six
75 counties in that State traversed by the Seaboard, and the percentage of decrease in the assessment in 1921 as compared with 1920 of such real property, is as follows:

County.	Assessed value of land, timber, manufacturing properties, minerals, quarry, and town lots for the year 1920.	Percentage of reduction allowed in 1921 on assessment of 1920.	Assessed value of land, timber, manufacturing properties, minerals, quarry, and town lots for the year 1921.
Anson	$13,384,811	20%: 10% in towns	$10,993,019
Bertie	13,958,782	25%	10,469,086
Bladen	11,630,040	15%	9,885,534
Brunswick	7,953,027	None	7,953,027
Chatham	11,813,037	25%	8,859,778
Cleveland	28,158,726	15%	23,934,917
Columbus	15,789,229	None	15,789,229
Durham	43,426,847	25%	32,570,120
Franklin	16,594,580	40%	9,956,748
Gaston	52,344,289	25%	39,258,217
Granville	16,088,145	33⅓%	10,725,430
Halifax	35,636,872	40%	21,382,123
Lee	8,706,469	33⅓%	5,804,313
Lincoln	12,584,088	25%	9,348,066
Mecklenburg ...	93,500,878	16⅔%	77,917,398
Moore	15,604,749	25%; 10% in towns	12,489,601
New Hanover ..	37,517,377	None	37,517,377
Northampton ...	12,367,534	33⅓%	8,245,023
Richmond	18,450,390	Revaluation	18,151,048
Robeson	48,024,939	Revaluation	28,772,438
Rutherford	19,912,642	10%	17,921,378
Scotland	21,319,716	Revaluation	13,847,748
Union	21,444,971	25%	16,083,738
Vance	17,856,566	33⅓%	11,904,378
Wake	53,739,885	None	53,739,885
Warren	12,373,446	Revaluation	9,688,101
	$660,182,035		$523,297,710

That the weighted average percentage in the decrease of the assessment of real property for 1921 compared with the assessment
76 of 1920 in said twenty-six counties, is 20.73 per cent; that from his knowledge of the values of property generally in North Carolina and of railroad property in particular, the property of the Seaboard Air Line Railway Company in that state should be reduced to as great an extent as, if not greater than, the property other than railroads in the twenty-six counties, which are traversed by said railroad.

He further states:

1. That under an Act of the General Assembly of North Carolina, ratified the eleventh day of March, 1919, and commonly known as "The Revaluation Act," all property including that of railroads was

required to be assessed as of the first day of May, 1919 at its true value in money; that in conformity with and in pursuance of this act, the State Tax Commission fixed the value of the property of the Seaboard Air Line Railway Company in the State of North Carolina as of May 1st, 1919 at $34,768,440; that said assessment continued in effect for the year 1920, and that the Commissioner of Revenue of North Carolina has fixed the value of said property as of May 1st, 1921 at the foregoing figure, to-wit: $34,768,440.

2. That it is assumed that the State Tax Commission in arriving at the value for taxing purpose of the property of the Seaboard Air Line Railway Company in North Carolina as of May 1st 1919, complied with section 64 of the Machinery Act, which expressly requires, "a due consideration of the actual cost of replacing the property." In ascertaining the value of the railway's tangible property on a given date, the market price of the several elements used for reproducing the same must be considered. The major items of these are its right of way, station and terminal grounds and buildings, rails and other track material, including cross ties, grading, etc.; buildings and structures, including timber, concrete, masonry and other materials; locomotives, coaches, freight and passenger cars, shop machinery, etc.

The following comparison in market prices as of May 1st, 1920 and May 1st, 1921 of some of the major items of material
77 and equipment necessary in reproducing a railroad, indicates the value in 1921 is considerable less than in 1920:

	May 1, 1920.	May 1, 1921.	Percentage of decrease.
Cross ties, each	$1.36	$.75	45%
Piling, Long Leaf Pine, per lineal foot	.14	.10	29%
Timber, per M feet, B. M.	60.00	18.00	70%
Angle Bars, per cwt.	4.40	3.25	26%
Pig Iron, per G. T.	45.00	23.50	48%
Steel Castings, per cwt.	9.75	7.725	21%
Tin (Pig), per lb.	.60	.333	44%
Lead (Pig), per lb.	.096	.055	43%

Based on rates of pay paid by the Railway Company for construction labor on May 1st, 1920 and May 1st, 1921 respectively, the average reduction in the cost of labor which is assumed would have been employed in the construction of the railway's lines of railroad on said dates, is 27.01 per cent.

The naked value of land for railroad purposes is directly dependent upon the market value of adjacent land and is affected by the same economic conditions. Consequently if such adjacent land has depreciated in value, there must be a corresponding decrease in the value of railroad land.

3. That the net operating income of the Seaboard Air Line Railway Company in North Carolina for the calendar year 1918, immediately preceeding the assessment of its property as of May 1st, 1919 was $3,112,693.46; for the year 1919, it was $2,412,076.65; for the

year 1920, it was $2,534,305.84; for the period of January 1st to April 30th, 1921, it was $704,965.86, or equated upon an annual basis $2,114,897.58. It will, therefore, be observed that the net operating income of the Seaboard in North Carolina has, as compared to the year 1918, decreased by the following percentages:

78
1919..... 22.5 per cent.
1920..... 18.5 per cent.
1921..... 32.0 per cent (based upon the first four months thereof.)

As compared to the year 1918, immediately preceeding the date of the revaluation of the property of the Seaboard Air Line Railway Company in North Carolina, the net operating income of said railway as a system has decreased as follows:

1919..... 48.9 per cent.
1920..... 123.0 per cent.
1921..... 16.8 per cent (based upon the first four months thereof.)

4. That curtailment in the production of agricultural products and reduction in the output of factories in North Carolina during the year 1921, as compared to the year 1920, which resulted in a deflation of the value of land devoted to agricultural pursuits, as well as a deflation in the value of manufacturing enterprises, and their outputs have materially affected the volume of business handled by this railroad in the State of North Carolina. This is demonstrated by the fact, that for the first four months of the year 1920, it transported to all stations in North Carolina, 1,022,143 tons of freight, both interstate and intrastate; while for the corresponding months of 1921, it transported to such stations, only 692,016 tons of such freight, or a decrease of 32.3 per cent; during the period, January 1st to April 30th, 1920 said railway forwarded from all stations in North Carolina 962,770 tons of freight, both interstate and intrastate, while for the same period of 1921 it forwarded from such stations 639,699 tons of freight, or a decrease of 33.6 per cent; for the first four months of 1920, the Seaboard Air Line Railway Company handled from all stations in North Carolina, 471,251 passengers, both interstate and intrastate, while for the same period of 1921, it handled from such stations only 421,155 passengers, or a decrease of 10.6 per cent; for months subsequent to April, 1921, as
79 compared to the same months of the previous year, the decrease has been materially larger, running from 29 per cent in May to 40 per cent in August.

The number of loaded cars moved over the entire Seaboard System the first six months of 1920 was 927,208 and for the same period of 1921, 686,739, a decrease of 240,469 or 25.93 per cent. The number of loaded cars moved over the Virginia and North Carolina Divisions, the mileage of which is almost entirely within the State of North Carolina, for the first six months of 1920 was 353,306 and for the same period of the year 1921, 245,901, a decrease of 107,405 or 30.4 per cent.

5. That when the assessment of the Seaboard Air Line Railway Company's property in North Carolina was made as of May 1st, 1919, and prior thereto, its expenses of operation were materially less than they have been since that date. It therefore follows that the sum of money available for the payment of taxes, interest and finally representing net income was materially greater prior to May 1st, 1919, than it has been subsequent to that date. This is shown by the following statement of the amount of each dollar of gross earnings in North Carolina for the year indicated required to pay operating expenses exclusive of taxes, in that state:

1916	$.5549	
1917	.6053	
1918	.6937	
1919	.7570	
1920	.7944	
1921	.7995	(first four months thereof.)

6. That the business done by the Seaboard Air Line Railway Company in North Carolina is largely interstate, consisting principally of freight that is loaded and discharged in other states, and simply passing through the State of North Carolina in transit. During the years 1919, 1920 and for the first four months of 1921, approximately three-fourths of the total North Carolina earnings were interstate.

While it is true that the net operating income of said railway in North Carolina by virtue of the foregoing is proportionately larger than in any other state, it is necessary to apply a large per-
80 centage of North Carolina's net earnings to the expenses of the operation of the system as a whole and to the reduction of the deficit existing between gross earnings and operating expenses in other states, on business originating in or destined to such states and passing through the State of North Carolina.

7. That a statement is hereto attached, marked "Exhibit A," and asked to be considered as a part of this affidavit, showing the par and market value of the stocks and bonds of the Seaboard Air Line Railway Company as of May 1st, 1919, 1920 and 1921. By reference to said exhibit, it will be observed that the market value of the stocks and bonds of the Seaboard Air Line System allocated to North Carolina in the manner indicated in said exhibit have decreased as of May 1st, 1920, when compared with May 1st, 1919, 21.39 per cent, and as of May 1st, 1921, compared with May 1st, 1919, have decreased 19.66 per cent. If instead of the basis of allocation to North Carolina of the Seaboard's securities as used in exhibit "A," North Carolina's proportion of the market value of such securities is allocated to it upon a track mileage basis (17.61 per cent), the market value of North Carolina's proportion of such securities as of May 1st, 1920, compared to May 1st, 1919, would show a decrease of 23.34 per cent, and as of May 1st, 1921, when compared with May 1st, 1919, would show a decrease of 21.7 per cent.

The market value of quite a number of the Seaboard's securities

SAL.

EXHIBIT "A" AC
OF THE SE

AS OF MAY

Stock	System Par Value	System Market Value
Common	$37,019,400	$ 3,331,746
Preferred	23,931,400	4,666,623
Total Stock	60,950,800	7,998,369
Bonds		
S. A. L. Ry. Co., 1st & Cons. Mtg.	27,777,500	22,222,000
S. A. L. Ry. Co., 1st Mtg.	12,775,000	9,070,250
S. A. L. Ry. Co., Refunding Mtg.	19,350,000	11,029,500
Seaboard & Roanoke Ry. 1st Mtg.	2,500,000	2,381,250
Raleigh & Gaston Ry., 1st Mtg.	1,200,000	1,140,000
Durham & Northern Ry., 1st Mtg.	100,000	95,000
Raleigh & Augusta Air Line Ry., 1st Mtg.	1,000,000	1,020,000
Carolina Central Ry., 1st Cons. Mtg.	3,000,000	2,310,000
Ga. Carolina & Northern Ry., 1st Mtg.	5,360,000	5,078,600
Ga. & Ala. Ry., 1st Cons. Mtg.	6,085,000	5,522,137
Ga. & Ala. Ter. Co., 1st Mtg.	1,000,000	900,000
Fla. Central & Pen. Ry., 1st Mtg.	3,000,000	3,045,000
Fla. Central & Pen. Ry., 1st Mtg. L.G.X.	346,000	321,780
Fla. Central & Pen. Ry., 1st Cons. Mtg.	4,372,000	4,044,100
Southbound Ry., 1st Mtg.	2,033,000	1,981,350
S. A. L. Ry. Atl.-Bghm., 1st Mtg.	5,910,000	4,432,500
Fla. West Shore Ry., 1st Mtg.	755,000	717,250
S. A. L. Ry. Co., 2 yr. Gold Notes	4,000,000	3,900,000
S. A. L. Ry. Co., Adj. Mtg.	25,000,000	12,375,000
Equip Trust Bonds	4,367,000	4,192,320
Total Bonds	129,930,500	95,728,057
Secured Notes	1,250,000	1,250,000
Sec. of Treas. of U. S. Notes		
Total All Securities	192,131,300	104,976,426

A—Applicable to entire system—prorated on owned mileage basis.
B—Applicable to North Carolina and other states—prorated on basis of mortgaged
C—Applicable to State of North Carolina only.
D—Par value applicable to all states ($12,853,000) prorated on owned mileage basis
E—Not applicable to North Carolina.
NOTE: Market value based on sales and market quotations as near May 1st as po
CERTIFIED to as exhibit "A," accompanying affidavit of W. L. Stanley, under date

page 88

"A" ACCOMPANYING AFFIDAVIT OF W. L. STANLEY, SHOWING PAR VALUE AND MARKET VALUE OF SECURITIES
HE SEABOARD AIR LINE RAILWAY COMPANY OUTSTANDING FOR SYSTEM AND APPLICABLE TO STATE OF
NORTH CAROLINA, AS OF MAY 1ST, 1919, MAY 1ST, 1920, AND MAY 1ST, 1921.

MAY 1ST, 1919		AS OF MAY 1ST, 1920				AS OF MAY 1ST, 1921				
	North Carolina		System		North Carolina		System		North Carolina		
ne	Par Value	Market Value	Par Value	Market Value	Par Value	Market Value	Par Value	Market Value	Par Value	Market Value	Basis Allocated to N. C.
	$ 6,659,790	$ 599,381	$ 37,019,400	$ 2,869,004	$ 6,659,790	$ 516,134	$ 37,019,400	$ 2,221,164	$ 6,659,790	$ 399,587	A
	4,305,259	839,525	23,931,400	3,111,082	4,305,259	559,684	23,931,400	2,333,312	4,305,259	419,763	A
	10,965,049	1,438,906	60,950,800	5,980,086	10,965,049	1,075,818	60,950,800	4,554,476	10,965,049	819,350	
	2,312,255	1,840,804	27,777,500	12,499,875	2,312,255	1,040,515	27,777,500	13,333,200	2,312,255	1,109,382	D
	2,298,222	1,631,738	12,775,000	7,217,875	2,298,222	1,298,495	12,775,000	7,920,500	2,298,222	1,424,896	A
	3,481,065	1,984,207	19,350,000	8,514,000	3,481,065	1,531,669	19,350,000	7,594,875	3,481,065	1,366,318	A
	565,750	538,877	2,500,000	2,212,500	565,750	500,689	2,500,000	2,187,500	565,750	496,031	B
	1,200,000	1,140,000	1,200,000	960,000	1,200,000	960,000	1,200,000	984,000	1,200,000	984,000	C
	100,000	95,000	100,000	80,000	100,000	80,000	100,000	82,000	100,000	82,000	C
	1,000,000	1,020,000	1,000,000	900,000	1,000,000	900,000	1,000,000	935,000	1,000,000	935,000	C
	3,000,000	2,310,000	3,000,000	2,040,000	3,000,000	2,040,000	3,000,000	1,905,000	3,000,000	1,905,000	C
	287,832	272,721	5,360,000	4,636,400	287,832	248,975	5,360,000	4,582,800	287,832	246,096	B
	-------	-------	6,085,000	5,050,550	-------	-------	6,085,000	4,807,150	-------	-------	E
	-------	-------	1,000,000	835,000	-------	-------	1,000,000	750,000	-------	-------	E
	-------	-------	3,000,000	2,940,000	-------	-------	3,000,000	2,745,000	-------	-------	E
	-------	-------	346,000	359,840	-------	-------	344,000	295,840	-------	-------	E
	-------	-------	4,372,000	3,497,600	-------	-------	4,372,000	3,585,040	-------	-------	E
	-------	-------	2,033,000	1,636,565	-------	-------	2,033,000	1,626,400	-------	-------	E
	-------	-------	5,910,000	3,546,000	-------	-------	5,910,000	3,486,900	-------	-------	E
	-------	-------	755,000	607,755	-------	-------	755,000	604,000	-------	-------	E
	719,600	701,610	4,000,000	2,700,000	719,000	485,730	1,000,000	720,000	179,900	129,528	A
	4,497,500	2,226,262	25,000,000	8,500,000	4,497,500	1,529,150	25,000,000	8,000,000	4,497,500	1,439,200	A
	785,623	754,198	5,009,000	4,508,100	901,119	811,007	4,029,000	3,636,100	724,817	652,335	A
	20,247,847	14,524,417	130,572,500	73,242,080	20,363,343	11,426,230	126,590,500	69,771,305	19,847,341	10,769,288	
	224,875	224,875	1,250,000	1,250,000	224,875	224,875	625,000	625,000	112,438	112,438	A
							7,246,900	7,246,900	1,303,717	1,303,717	A
	31,437,771	16,188,196	192,773,300	80,472,166	31,553,267	12,726,923	195,413,200	82,197,681	32,028,545	13,004,793	

gaged mileage in each state.

basis—balance applicable to states other than North Carolina.

as possible.

date of December 31, 1921.

is less today than on May 1st, 1921. If the market value of the common and preferred stock and the adjustment mortgage bonds alone is considered as of December 28th, 1921, (all other securities being considered upon the basis of their market value as of May 1st, 1921), and if North Carolina's proportion is allocated to it upon the basis shown in exhibit "A," the total market value of all securities thus allocated to North Carolina would be 27.73 per cent less than North Carolina's proportion thereof, as of May 1st, 1919.

8. That considering the main line of the Seaboard System as extending through the State of North Carolina from Richmond-Portsmouth, Va., to Jacksonville, Fla., and from Hamlet, N. C., to
81 Birmingham, Ala., 53.08 per cent of the Seaboard mileage in North Carolina is branch line mileage. Of the total mileage in North Carolina, viz., 627.30 miles, approximately 196.05 miles or 31.25 per cent is unballasted.

9. That the Seaboard Air Line Railway Company owns in North Carolina no valuable terminals as compared to those owned by it in other states. In Portsmouth, Va. terminal facilities of this railroad are assessed at $1,424,812. It is generally conceded that property for taxation in Virginia is valued at 66⅔ per cent of its actual worth; upon this basis the terminal facilities of this railroad in Portsmouth, Va. upon a 100 per cent basis would be worth $2,137,429. In Georgia the terminal facilities of the railroad located at Savannah are assessed at $1,346,724. Property in Georgia assessed for taxation at approximately 62½ per cent of its actual value, which would result in an actual value of $2,020,288 upon the property of this railroad at Savannah, Ga. In Florida the terminal facilities of the railroad located principally at Jacksonville, Fernandina and Tampa are assessed at $1,515,000. There is no dispute that property in that state is assessed at 50 per cent of its actual value. Upon this basis the foregoing property of the railroad in Florida would be worth, upon a 100 per cent basis, $3,030,000. The total value ascertained in the manner indicated of these terminal facilities in the three states mentioned is therefore $7,187,717. As against this the Seaboard has terminal facilities in the State of North Carolina at Wilmington assessed at $239,400. This does not take into consideration the value of minor terminal properties in other states, nor the value of shop property located at Jacksonville, Fla. where one of the largest shops of the Seaboard is situated, there being no similar property in North Carolina, even approximately in size or value the shop property in the state mentioned.

W. L. STANLEY.

Subscribed and sworn to before me in Atlanta, Ga. this — day of December, 1921.

C. L. CHAPPELL,
Notary Public.

(Here follows table marked page 82.)

83 *Affidavit of H. W. MacKenzie.*

Filed Jan. 7, 1922.

Affidavit of H. W. MacKenzie, General Auditor.

STATE OF VIRGINIA,
City of Portsmouth, To-wit:

W. H. MacKenzie, being first duly sworn, makes oath that he is General Auditor of Seaboard Air Line Railway Company; and that the annexed statement is a true and correct statement of system gross revenue and expenses apportioned to the several states in which the Seaboard Air Line Railway Company operates for the year ending December 31st, 1916, as shown by the books and accounts of said Seaboard Air Line Railway Company.

(Signed) H. W. MACKINZIE.

Subscribed and sworn to before me this 30th day of December, 1921.

(Signed) J. M. DREWRY,
Notary Public.

My Commission expires April 21st, 1923.

I hereby certify that this is a case in which, by the laws of Virginia, no tax is required upon the seal.

(Signed) J. M. DREWRY,
Notary Public.

(NOTE.—A similar affidavit is attached to the statement for 1917, 1918, 1919, 1920 and the first four months of 1921.)

(Here follow tables marked pages 84-89, inclusive.)

S.A.L

SPOBL.

SEABOARD AIR LINE RAILWAY

STATEMENT OF SYSTEM GROSS REVENUE AND
TO THE SEVERAL STATES IN WHICH THIS RAI
YEAR ENDING DECEMBER

	VA.	N. C.	S. C.	
Gross Revenue:				
Interstate	$2,320,904.34	$5,819,168.47	$3,502,482.75	$3
Intrastate	424,964.33	1,716,987.45	869,712.06	1
Total	2,745,868.67	7,536,155.92	4,372,194.81	5
Operating Expenses	1,591,983.20	4,182,003.81	3,083,751.85	3
Taxes	92,861.01	284,367.96	156,286.38	
Uncollectible Railway Revenue	588.12	2,344.26	2,527.61	
Net Operating Income	1,060,436.34	3,067,439.89	1,129,628.97	1

OMPANY

KPENSES APPORTIONED
OAD OPERATES, FOR THE
1916.

GA.	ALA.	FLA.	SYSTEM
1,735.86	$735,907.29	$2,499,607.56	$18,649,896.27
3,066.96	200,460.88	2,443,499.30	7,534,590.98
9,702.82	936,458.17	4,943,106.86	26,184,487.25
3,430.84	940,558.15	3,764,178.82	17,531,906.67
9,165.50	57,386.13	380,624.36	1,210,691.34
2,793.18	813.71	3,823.46	12,890.34
3,313.30	62,200.82 (red)	794,480.22	7,428,906.90

S.A.L

SEABOARD AIR LINE RAILWA

STATEMENT OF SYSTEM GROSS REVENUE AND
TO THE SEVERAL STATES IN WHICH THIS RA
YEAR ENDING DECEMBE

	VA.	N. C.	S. C.	
Gross Revenue:				
Interstate	$2,815,308.64	$6,909,478.13	$4,463,225.49	$
Intrastate	397,756.43	1,863,397.57	1,138,162.94	
Total	3,213,065.07	8,772,875.70	5,601,388.43	
Operating Expenses	1,940,196.71	5,310,467.75	3,971,791.16	
Taxes	117,344.58	320,840.77	193,594.49	
Uncollectible Railway Revenue	447.43	1,783.84	1,924.45	
Net Operating Income	1,146,076.35	3,139,783.34	1,434,078.33	

COMPANY

EXPENSES APPORTIONED
ROAD OPERATES, FOR THE
31, 1917.

GA.	ALA.	FLA.	SYSTEM
04,052.62	$ 770,540.95	$2,700,836.47	$22,052,442.80
13,900.77	212,963.28	2,066,522.72	8,292,703.71
07,953.89	983,504.23	5,466,359.19	30,345,146.01
84,854.88	1,073,200.38	4,377,666.98	21,717,177.86
31,414.00	68,802.65	418,256.54	1,380,253.08
2,130.96	619.52	2,927.50	9,833.70
09,533.55	159,118.32 (red)	667,506.17	7,237,881.42

S.A.L.

SEABOARD AIR LINE RAILWAY

STATEMENT OF SYSTEM GROSS REVENUE AND
TO THE SEVERAL STATES IN WHICH THIS RA
YEAR ENDING DECEMBER

	VA.	N. C.	S. C.	
Gross Revenue:				
Interstate	$3,864,382.16	$ 9,207,221.65	$6,131,520.23	$
Intrastate	454,896.67	2,018,972.92	1,468,015.08	
Total	4,319,278.83	11,226,194.57	7,599,535.31	
Operating Expenses	2,979,211.57	7,788,299.53	6,697,230.30	
Taxes	128,015.71	323,452.90	211,778.18	
Uncollectible Railway Revenue	445.24	1,748.68	2,183.90	
Net Operating Income	1,211,606.31	3,112,693.46	688,342.93	

COMPANY

EXPENSES APPORTIONED
.ROAD OPERATES, FOR THE
1, 1918.

GA.	ALA.	FLA.	SYSTEM
09,820.18	$1,005,326.58	$3,253,820.40	$29,492,091.20
44,614.84	255,180.91	2,889,334.41	9,431,014.83
84,435.02	1,350,507.49	6,143,154.81	38,923,106.03
19,053.15	1,680,836.18	6,782,162.21	33,846,792.94
70,538.47	69,612.63	466,038.08	1,469,434.87
2,077.79	587.34	2,876.12	9,919.07
92,765.61	400,528.66 (red)	1,107,920.50 (red)	4,096,959.15

S.A.L.

SEABOARD AIR LINE RAILWAY (

STATEMENT OF SYSTEM GROSS REVENUE AND E
TO THE SEVERAL STATES IN WHICH THIS RAIL
YEAR ENDING DECEMBER 3

	VA.	N. C.	S. C.	
Gross Revenue:				
Interstate	$3,880,552.46	$ 8,983,067.82	$6,100,338.08	$6,1
Intrastate	487,126.27	2,575,874.24	1,612,021.39	2,8
Total	4,367,678.73	11,558,942.06	7,772,359.47	8,9
Operating Expenses	3,290,266.13	8,750,415.15	7,277,780.43	8,2
Taxes	160,822.24	395,303.33	250,776.69	2
Uncollectible Railway Revenue	287.89	1,146.93	1,438.71	
Net Operating Income	916,302.47	2,412,076.65	242,363.64	3

COMPANY

EXPENSES APPORTIONED
ROAD OPERATES, FOR THE
1, 1919.

GA.	ALA.	FLA.	SYSTEM
19,661.81	$1,255,907.15	$3,877,354.77	$30,276,882.09
06,094.84	261,375.99	3,161,557.61	10,906,650.34
28,356.65	1,517,283.14	7,038,912.38	41,183,532.43
70,617.65	1,825,248.64	8,051,480.12	37,465,817.12
30,098.49	72,980.54	440,811.52	1,619,792.81
1,363.81	381.01	1,894.60	6,512.95
7,276.70	381,327.05 (red)	1,455,282.86 (red)	2,001,400.55

S. A. L.

SEABOARD AIR LINE RAILWA

STATEMENT OF SYSTEM GROSS REVENUE AN
TO THE SEVERAL STATES IN WHICH THIS R
YEAR ENDING DECEMBE

	VA.	N. C.	S. C.
Gross Revenue:			
Interstate	$4,295,694.93	$10,391,329.80	$7,185,714.74
Intrastate	605,229.38	3,255,293.84	2,026,123.21
Total	4,900,924.31	13,646,623.64	9,211,837.95
Operating Expenses	3,894,065.11	10,841,053.40	9,575,860.47
Taxes	142,873.04	269,895.57	333,844.10
Uncollectible Railway Revenue	343.58	1,368.83	1,717.05
Net Operating Income	863,642.58	2,534,305.84	699,583.67 (red)

COMPANY

EXPENSES APPORTIONED
LROAD OPERATES, FOR THE
31, 1920.

GA.	ALA.	FLA.	SYSTEM
6,938,736.72	$1,404,138.48	$ 5,825,513.68	$35,541,128.28
3,353,181.48	834,814.09	4,149,258.76	13,723,901.36
9,291,918.20	1,738,953.12	9,474,772.42	49,265,029.64
9,570,854.81	2,386,331.76	11,244,636.85	48,512,802.40
319,973.62	81,404.33	539,382.12	1,687,372.78
1,627.67	454.67	2,261.11	7,772.91
600,587.90 (red)	729,237.64 (red)	2,311,507.66 (red)	942,918.45 red)

S.A.L.

SEABOARD AIR LINE RAILWAY

STATEMENT OF SYSTEM GROSS REVENUE AND
TO THE SEVERAL STATES IN WHICH THIS RAI
FIRST FOUR MONTHS

	VA.	N. C.	S. C.	
Gross Revenue:				
Interstate	$1,184,893.71	$3,048,659.21	$2,402,721.83	$2,
Intrastate	160,108.48	1,041,395.46	591,571.93	
Total	1,345,002.19	4,090,054.67	2,994,293.76	3,
Operating Expenses	984,948.51	3,270,003.29	2,652,015.42	2,
Taxes	54,000.00	114,000.00	108,000.00	
Uncollectible Railway Revenue	272.41	1,085.52	1,361.23	
Net Operating Income	305,781.27	704,965.86	232,917.11	

MPANY

PENSES APPORTIONED
AD OPERATES, FOR THE

A.	ALA.	FLA.	SYSTEM
767.10	$389,261.91	$2,029,789.95	$11,502,093.71
289.41	98,326.98	1,380,347.40	4,160,039.66
956.51	487,588.89	3,410,137.35	15,752,133.37
983.29	530,025.70	3,517,619.27	13,544,595.48
000.00	30,000.00	186,000.00	600,000.00
290.54	360.53	1,792.85	6,163.06
782.68	72,797.34 (red)	295,274.77 (red)	1,601,374.81

90 *Additional Affidavit of H. W. MacKenzie.*

Filed Jan. 14, 1922.

STATE OF VIRGINIA,
City of Portsmouth:

Personally appeared before me, a Notary Public in and for the City of Portsmouth, State of Virginia, H. W. MacKenzie, a resident of the aforesaid City and State, who after being duly sworn says that:

1. He is the General Auditor of the Seaboard Air Line Railway Company and that he has held such office since March 1st, 1920; that from July 1st, 1918, to March 1st, 1920, he was Federal Auditor for the United States Railroad Administration, and as such Federal Auditor supervised the accounting for the operations of the Seaboard Air Line Railway Company's properties which during that period were under Federal Control and were operated by the United States Railroad Administration; that from 1913 to July 1st, 1918, he was Comptroller of the Seaboard Air Line Railway and its successor, the said Seaboard Air Line Railway Company; that as General Auditor, Federal Auditor and Comptroller, he prescribed the accounting methods of said railroad company and directed and supervised its accounts in accordance with such methods.

2. The business done by the Seaboard Air Line Railway Company in the State of North Carolina is largely interstate and during the years 1919, 1920 and for the first four months of 1921, approximately three-fourths of the total North Carolina earnings were derived from interstate buiness. Such interstate business in great part was trans-state traffic, having neither origin nor destination within the State of North Carolina, but was simply transported through that State. Such trans-state traffic consisted largely of such high-class revenue producing commodities as fruits, vegetables and other perishable products which are handled in special equipment, such as refrigerator and ventilated cars which are moved in fast freight service. The cost of handling such perishable traffic, taking into consideration initial and terminal service incident thereto, is greatly in excess of the average cost of handling other business on the line of the said railroad company. The accounting methods employed by the said railroad company do not, in allocating operating revenues to the State of North Carolina, make any adjustment or allowance for assembling, handling, loading, unloading and other terminal costs and charges incident to the handling of trans-state traffic. Consequently, this results in allocating to the State of North Carolina a net revenue which is in excess of that actually earned within that State.

(S.) H. W. MACKENZIE.

Subscribed and sworn to before me this 12th day of January, 1922.

(S.) J. M. DREWRY,
Notary Public.

My commission expires April 21st, 1923.

I hereby certify that this is a case in which, by the laws of Virginia, no tax is required upon the seal.

(S.) J. M. DREWRY,
Notary Public.

91 *Affidavit of George M. Phifer.*

Filed Jan. 24, 1922.

STATE OF NORTH CAROLINA,
County of Mecklenburg:

Affiant, George M. Phifer, says that he is, and has been, a resident of Mecklenburg County for 65 years; that he has made an examination of all deeds recorded in Mecklenburg County, N. C., from January 1st, 1921, to June 30th, 1921, inclusive, in which the consideration appears to be more than One Thousand Dollars ($1,000.00), and also of the assessed value of the real estate embraced in said deeds for the year 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration of the conveyance and the assessed value of the said property for the year 1921; that when the consideration shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows: From the amount of the Federal Tax imposed and entered on the record, viz: when the consideration or value of the interest in the property conveyed, exclusive of the value of any lien or encumbrance thereon exceeds $100.00, and does not exceed $500.00, fifty cents, and for each additional $100.00 or fractional part thereof in excess of $500.00, fifty cents, and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $3,169,115.25, and that the total assessed values for taxation for the year 1921 of the properties embraced in said deeds contained in said statement amount to $1,815,279.50.

(Statements attached.)

(Signed.) GEO. M. PHIFER, *Affiant.*

S D 2

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Jan.	18	Jno B. Alexander &w.	F. B. Smith	3,000.00.	1,875.00
Jan.	10	HJ Anthony & wife	T. E. Sharp	2,350.00.	1,125.00
Jan.	28	CP Ausband & wife	Sam Wallace	4,100.00.	2,250.00
Jan.	27	SamuelM Asbery & w..	O. A. Neil	3,500.00.	2,365.00
Mar.	2	AM. Trust Co.	W. C. Curby & wife.	3,000.00.	5,000.00
Feb.	2	J. H. Autan	A. W. Ferguson	6,200.00.	2,347.50
Mar.	16	D. U. Abernethy	Alexander Copeland.	1,400.00.	600.00
Mar.	3	C.P.Ausband & wife	H. C. Sherrill	1,100.00.	900.00
Mar.	2	MO & JH Alexander	EL Barkley & wife	1,000.00.	525.00
Mar.	22	Minnie A. Alexander.	Micking Presbytery.	1,800.00.	750.00
Apr.	12	WS Alexander & wife.	W. Edgar Reid	2,000.00.	1,125.00
Apr.	6	Eustin & WS Alexander	J. S. DeVond	35,475.00.	11,250.00
Apr.	4	F.D. Alexander	Vienneta Nail	1,175.00.	750.00
Apr.	1	W. S. Alexander	W. B. Robinson	4,550.00.	2,700.00
Mar.	31	T. A. Adams	J. D. Short	3,500.00.	2,595.00
Apr.	29	T. A. Adams & wife	Pyramid Motor Co.	43,000.00.	38,856.25
Apr.	27	C.R.Austin & wife	Suburban Rlty Co	5,000.00.	2,475.00
Apr.	30	Annie L Alexander	C.A. McKinthan	3,200.00.	2,100.00
Jan.	18	Jno B Alexander & w.	F. B. Smith	3,000.00.	1,500.00
Jan.	8	Jno B.Brown & wife	M. B. Rose	1,000.00.	660.00
Jan.	8	Jno B.Brown & wife	M. B. Rose	1,000.00.	660.00

Jan.	3	.J. H. Breen & wife .	J & LE O'Donaghue .	2,500.00.	1,125.00
Apr.	8	.Jos C Payne & wife .	Hattie M. Eleem .	3,000.00.	1,875.00
Feb.	7	.J. H. Baker .	W. J. Howell .	1,000.00.	675.00
Feb.	2	.E.W.Bender & wife .	O. F. Theis .	20,000.00.	4,931.25
Feb.	2	.Jno B Brown & wife .	J. B. Frailey .	8,000.00.	4,057.50
Feb.	1	.A.D.Brown & wife .	W. P. Taylor .	2,100.00.	1,125.00
Jan.	29	.J.W.Bryant & wife .	H.M.Watson & wife .	2,000.00.	1,750.00
Jan.	27	.G.F.Bost & wife .	Maggy G.Blackinship.	4,500.00.	2,400.00
Jan.	21	.WL Burrough & wife .	E. C. Tesh .	1,500.00.	932.50
Mar.	8	.Paul B.Barringer &w.	Lee Kenney .	3,750.00.	2,250.00
Mar.	3	.Lilia M. Black .	W. R. Staple .	8,000.00.	2,456.25
Mar.	1	.H.M.Booth & wife .	E. C. Swink & wife.	5,400.00.	3,052.50
Mar.	1	.Charlotte Con'n Co..	Lula B. Vingham .	3,000.00.	1,500.00
Feb.	2	.Charlotte Con'n Co..	C. B. Bryant .	3,000.00.	1,721.25
Feb.	23	.Jessie May Bost .	Jno. C. Linden .	1,000.00.	675.00
Feb.	2	.W. M. Byrum .	Willie Rhymer .	3,400.00.	1,275.00
Feb.	21	.A.D.Banks & Mattie .	T. J. Millings .	1,000.00.	637.50
Mar.	16	.C. O. Brown & wife .	Myers Swortz .	1,750.00.	1,125.00
Mar.	16	.Jno C.Black & wife .	Ivery C. Ritch .	1,000.00.	712.50
Mar.	9	.Jas. Bracey .	Martin C. Propst .	1,500.00.	1,012.50
Mar.	29	.W.C.Brasington .	C. B. Alexander .	2,400.00.	1,125.00
Mar.	29	.C.O.Brown & wife .	Jas. P. Harris .	2,100.00.	1,350.00
Mar.	26	.T. R. Beam .	Brannon Vance .	1,500.00.	1,062.50
Mar.	26	.Mrs.MaggieBaumgaron.	W. J. Wright .	2,500.00.	1,537.50
Mar.	23	.Geo.H.Brockenboro .	Ada L.Brockenboro .	8,500.00.	2,760.00
Mar.	23	.Geo.H.Brockenboro .	H.C.Henderson .	10,000.00.	5,437.50
Mar.	21	.Geo.H.Billings,Jr. .	Geo.H.Billings,Sr..	2,000.00.	1,125.00
Mar.	21	lClaud Brown & wife .	E.H.France & wife .	1,500.00.	937.50
Mar.	21	.Lilly & WillisBrown.	W.C.Harris & wife .	2,500.00.	1,710.00
Mar.	21	.Alfred W Brown & w..	H.C.Ginley & wife .	1,200.00.	787.50

S D-7

S T A T E M E N T.

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 to 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Mar.	19	Geo.H.Billings & W.	Rosele T. Wade	25,000.00.	9,150.00
Mar.	9	Estice Brand	Annie J. Maxwell	1,000.00.	637.50
Mar.	19	Bilbro Mills	C.W.Eslan & Wife	3,000.00.	1,500.00
Apr.	12	D. J. Bost	W.G. Shoemaker	1,800.00.	1,500.00
Apr.	11	Charlotte Const. Co..	Geo. E. Buttner	3,500.00.	1,125.00
Apr.	4	I.W.Bingham & Wife	Ellen McCall	7,500.00.	4,830.00
Apr.	2	Daisy & J.L.Billinsy.	Isham A. Brown	10,000.00.	6,112.50
Apr.	1	Mytle & D.R.Beatty	J. M. Reid & Wife.	2,500.00.	1,406.25
Mar.	3	K. A. Bradshaw	T. C. Wilson	6,900.00.	3,367.50
Apr.	30	J. C. Bunday & Wife	Murray Watson	1,200.00.	750.00
Apr.	30	Bilbro Mills	L. O. Buttner	3,000.00.	1,687.50
Apr.	23	W.M.Blackwelder & W..	A.D.Bradford & W..	3,500.00.	2,175.00
Jan.	15	Charlotte Invest.Co..	Automatic Car Co..	10,500.00.	2,156.25
Jan.	15	Continental Mfg. Co..	R. C. Birmingham	10,000.00.	3,562.50
Jan.	6	H. M. Collins & Wife.	Saxby Chaplin	7,500.00.	3,375.00
Jan.	4	R. D. Craver	W. C. King	1,000.00.	637.50
Jan.	4	Chadwick-Hoskins Co..	City of Charlotte.	5,340.00.	3,150.00
Jan.	1	Charlotte Const.Co.	Mrs.Claudia S.Oates	10,500.00.	7,875.00
Feb.	14	F. O. Clarkson	J. L. Thomas	2,625.00.	1,050.00
Feb.	1	Fred.G.Coulter & W.	C. B. Gay	6,500.00.	3,225.00
Feb.	11	Charlotte Const.Co.	H. A. London	5,000.00.	2,250.00
Feb.	11	Carolina Company	M. B. Rose	1,000.00.	637.50
Jan.	26	[illegible]	[illegible]	[illegible]	[illegible]

[illegible]	24	[illegible] Company	[illegible]	$ 500.00	1,125.00
Mar.	8	[illegible] Chambers	L. & F. Hardman	25,500.00	6,000.00
Feb.	18	Realty Company	C. Velour	1,200.00	750.00
Mar.	15	R.C.Carson & Wife	L. H. Lansus	1,250.00	562.50
Mar.	14	Continental Mfg. Co.	Lee Kenney	9,500.00	6,251.25
Mar.	14	Continental Mfg. Co.	F. F. Rinehardt	3,500.00	1,875.00
Mar.	14	Continental Mfg. Co.	W. E. Dodger	3,000.00	1,350.00
Mar.	29	Creig-Little RltyCo.	R. D. Jones	3,000.00	1,425.00
Mar.	26	Conrad Rlty. Co.	H. C. SherrillCo.	2,400.00	1,500.00
Mar.	24	C. M. Carson & Wife	Suburban Rlty.Co.	1,250.00	600.00
Mar.	25	J. M. Park & Wife	J. R. Coley	2,500.00	1,125.00
Mar.	23	Charlotte Company	Gastonia BrickCo.	1,900.00	750.00
Mar.	23	McAlister Carson &W	Hattie M. Elam	2,500.00	937.50
Mar.	1	Guss Cottis & Wife	W. F. Kilgo & W.	7,500.00	3,750.00
Mar.	17	Jas. T. Cannon	A. T. Mull	3,300.00	1,200.00
Apr.	16	J.C.& Chas. Autley	Barry M. Barnes	2,850.00	1,725.00
Apr.	14	Charlotte Company	Moses Walker	1,200.00	562.50
Apr.	12	Carolina Company	Maude Sams	1,000.00	750.00
Apr.	12	Charlotte Company	E. O. Bacom & W.	12,000.00	6,750.00
Apr.	1	C.M.Carson & Wife	Seril G. Swink	4,500.00	2,250.00
Apr.	1	Charlotte L.& R. Co.	L. G. Barry	1,500.00	1,012.50
Apr.	28	H. N. Carr	Myers Swortz	1,700.00	1,125.00
Apr.	25	Continental Mfg. Co.	J. C. Montgomery	1,500.00	1,162.50
Apr.	23	Continental Mfg. Co.	Elizabeth R.Hunter	4,000.00	2,062.50
Apr.	23	Charlotte Invest.Co.	Anna R. Smith	5,200.00	2,725.00
Apr.	23	Charlotte Invest.Co.	C. W. McMaken	2,000.00	1,125.00
Apr.	22	Continental Mfg. Co.	A. A. Warner &Co.	2,000.00	1,125.00
Apr.	4	H. M.Collins & Wife	T. E. Johnson	5,500.00	1,825.00
Apr.	20	M. W. Crocker &Wife	Lilliam L.Meakes	1,250.00	750.00
Apr.	30	Charlotte Const.Co.	Jennette M.Hendamon	7,000.00	4,108.75
Apr.	3	Charlotte Const.Co.	R. R. Faircloth	9,200.00	4,650.00
Jan.	13	S.W.Dandrege & Wife	A. D. Kencade	3,500.00	1,968.75
Jan.	6	Anna A. Dickson	Lila Auton	2,100.00	1,350.00
Jan.	3	C. M. Dunn & Wife	T. S. Bassett	2,500.00	1,350.00
			W. J. Chambers	3,500.00	2,745.00

page 93-

Mo.	Day				
----------		A. J. Draper & Wife.	Woman's Club	$50,000.00	$44,070.00
----------		Geo.F.Dunn & Wife	J. R. Dunn	5,000.00	1,350.00
Jan.	10	J. D. Hamby & Wife	S. H. Maness	1,500.00	822.50
Jan.	10	J. J. Harrill & W.	S. L. Dukcett	1,000.00	750.00
Jan.	7	J. M. Hatch	Lillian H. Hatch.	4,000.00	6,750.00
Jan.	4	J. H. Ham & Wife	J. D. Little	1,000.00	1,150.00
Jan.	3	Auto Hayes & Wife	Minnie V. Spratt.	7,750.00	3,000.00
Feb.	12	Home Real Estate Co.	M. W. Crocker	6,750.00	3,375.00
Feb.	2	Home Real Estate Co.	H. H. Gregg	3,500.00	2,340.00
Jan.	31	Home Real Estate Co.	Jas. W. Pharr	3,500.00	1,725.00
Jan.	27	J.J.Haliburton & W.	A. R. Surratt	2,500.00	1,672.50
Jan.	26	Miss Annie Hamby	S. H. McManess	3,500.00	1,376.25
Mar.	8	G. M. Hubbard & Wife)	H. B. Heath	1,600.00	1,200.00
Mar.	8	H. B. Heath	W. F. Kale	800.00	600.00
Mar.	7	J. M. House & Wife	Progressive Rlty-Co.	20,000.00	5,250.00
Feb.	25	W. R. Helms & Wife	J. A. Vita Jr.	2,500.00	1,800.00

Page 94-

	Jan.	3	.J	Breen & Wife	J & LE O'Donaghue	2,500.00	1,125.00
						25,500.00	6,000.00
Jan.	24	.	tte Company	.	L. & F. Hardman	1,200.00	750.00
Mar.	8	.	Chambers	.	C. Velour	1,250.00	562.50
Feb.	18	.	Realty Company	.	L. H. Lansus	9,500.00	6,251.25
Mar.	15	.	R.C.Carson & Wife	.	Lee Kenney	3,500.00	1,875.00
Mar.	14	.	Continental Mfg. Co..	.	F. F. Rinehardt	3,000.00	1,350.00
Mar.	14	.	Continental Mfg. Co..	.	W. E. Dodger	3,000.00	1,425.00
Mar.	14	.	Continental Mfg. Co..	.	R. D. Jones	2,400.00	1,500.00
Mar.	29	.	Creig-Little RltyCo..	.	H. C. SherrillCo..	1,250.00	600.00
Mar.	26	.	Conrad Rlty. Co.	.	Suburban Rlty.Co..	2,500.00	1,125.00
Mar.	24	.	C. M. Carson & Wife	.	J. R. Coley	1,900.00	750.00
Mar.	25	.	J. M. Park & Wife	.	Gastonia BrickCo..	2,500.00	937.50
Mar.	23	..	Charlotte Company	.	Hattie M. Elam	7,500.00	3,750.00
Mar.	23	.	McAlister Carson &W	.	W. F. Kilgo & W.	3,300.00	1,200.00
Mar.	1	.	Guss Cottis & Wife	.	A. T. Mull	2,850.00	1,725.00
Mar.	17	.	Jas. T. Cannon	.	Barry M. Barnes	1,200.00	562.50
Apr.	16	.	J.C.& Chas. Autley	.	Moses Walker	1,000.00	750.00
Apr.	14	.	Charlotte Company	.	Maude Sams	12,000.00	6,750.00
Apr.	12	.	Carolina Company	.	E. O. Bacom & W.	4,500.00	2,250.00
Apr.	12	.	Charlotte Company	.	Seril G. Swink	1,500.00	1,012.50
Apr.	1	.	C.M.Carson & Wife	.	I. G. Barry		

STATEMENT.

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
----------		A. J. Draper & Wife.	Woman's Club	$50,000.00.	$44,070.00
----------		Geo.F.Dunn & Wife	J. R. Dunn	5,000.00.	1,350.00
Mar.	3	W. C. Dowd & Wife	NewsPublishingCo.	50,000.00.	45.000.00
Feb.	28	H. C. Deal	R. J. Davis	5,435.00.	3,900.00
Feb.	21	P. C. Davidson & W..	EndState Creo.Co..	3,000.00.	1,128.75
Mar.	16	E.H.Dunston & Wife	Dora B. Green	2,500.00.	1,500.00
Mar.	16	E.F.DeLaney & Wife	Fanny & Maude-Harrill	1,875.00.	1,087.50
Apr.	15	R. F. Dunn & Wife	T. L. Keizer	3,500.00.	1,350.00
Apr.	6	J. S. Deverty	R. B. Alexander	12,700.00.	7,800.00
Apr.	2	W.C.Dowd & Wife	Emely F.Pendleton.	7,600.00.	3,932.50
Apr.	18	Saxondy Mills	Annie W. King	35,000.00.	21,750.00
Jan.	13	S. W.Dandrege & W.	Lee Allen	2,100.00.	1,275.00
Feb.	14	M.L.& N.W.Evans	Mrs.MarieFasnacht.	3,850.00.	2,055.00
Jan.	24	Bessie J. Eatmon	J.F.Phillips & W.	3,500.00.	1,575.00
Jan.	20	J.S.Edward & Wife	Fower & Lee	3,000.00.	2,250.00
Mar.	4	Sarah A. Ellis	W.A.Siten & Wife.	2,700.00.	1,368.75
Feb.	26	W.H.Earnhardt &Wife.	J. C. Pressley	2,000.00.	1,825.00
Mar.	23	H.M.& C.H.Elam	Charlotte Company	6,000.00.	3,000.00
Jan.	29	E. C. Frank	J.L.Wiggins & W..	8,000.00.	4,950.00
Mar.	22	Guss Eromon & Wife	R. T. Pullman	3,000.00.	2,175.00
Feb.	2	J. L. Fullbright &W.	J. E. Collett &W.	3,600.00.	1,825.00
Mar.	9	Frederick Dunlap&Co	F. A. Cowan	8,000.00	5,400.00

Feb.	8	Chas. Gibson & W.	B. F. Wellings			
Jan.	24	Geo. W. Graham	Sue O.Alexander		17,700.00.	17,250.00
Mar.	7	Jno. H. Griffith	J.M.Wilson & W.		13,000.00.	6,618.75
Mar.	3	J. G. Carroway	C. W. White		3,500.00.	2,550.00
Mar.	16	D.B.& K. S. Grun	W. M. Mathews		4,400.00.	2,437.50
June	18	E. M. Griffin & W.	F. M. Hice		3,200.00.	1,327.50
Mar.	29	E. C. Griffith	Salvation Army		25,000.00.	9,625.00
Mar.	26	D. J. Guthrey & W.	W. A. Matheson		3,700.00.	2,250.00
Mar.	19	C. H. Gover	Eugene Morrison		35,200.00.	19,290.00
Apr.	11	R. C. Gresham	E. B. Gresham &W.		4,000.00.	2,812.50
Apr.	2	C. H. Gover	Blicken S. Scott.		15,751.00.	8,925.00
Apr.	25	C. W. Gallegher	Robinson Springs		5,500.00.	2,250.00
Apr.	23	W. W. Grier & Wife	Inez Eisman		2,000.00.	1,350.00
Jan.	10	J. D. Hamby & Wife	S. H. Maness		1,500.00.	622.50
Jan.	10	J. J. Harrill & W.	S. L. Dukcett		1,000.00.	750.00
Jan.	7	J. M. Hatch	Lillian H. Hatch.		4,000.00.	6,750.00
Jan.	4	J. H. Ham & Wife	J. D. Little		1,000.00.	1,150.00
Jan.	3	Auto Hayes & Wife	Minnie V. Spratt.		7,750.00.	3,000.00
Feb.	12	Home Real Estate Co.	M. W. Crocker		6,750.00.	3,375.00
Feb.	2	Home Real Estate Co.	H. H. Gregg		3,500.00.	2,340.00
Jan.	31	Home Real Estate Co.	Jas. W. Pharr		3,500.00.	1,725.00
Jan.	27	J.J.Haliburton & W..	A. R. Surratt		2,500.00.	1,672.50
Jan.	26	Miss Annie Hamby	S. H.-McManess		3,500.00.	1,376.25
Mar.	8	G. M. Hubbard & Wife)	H. B. Heath		1,600.00.	1,200.00
Mar.	8	H. B. Heath	W. F. Kale		800.00.	600.00
Mar.	7	J. M. House & Wife	Progressive Rly-Co..		20,000.00.	5,250.00
Feb.	25	W. R. Helms & Wife	J. A. Vita Jr.		2,500.00.	1,800.00

S T A T E M E N T .

DATE of CONVEYANCE	GRANTOR	GRANTEE	L 1-1-'21 6-30-'21	1921 ASSESSED VALUE
Jan. 7	J. C. King	L. J. Jones	[illegible]	[illegible]
Jan. 6	W. C.Kind & Wife	R. D. Craver	1,000.00.	450.00
Feb. 11	Ester Karmin	S.B.McGinn &Wife.	1,700.00.	600.00
Mar. 8	W. F. Kale	H. B. Heath	1,000.00.	495.00
Jan. 15	B.R.Lee & Wife	F. M. Simmons	6,250.00.	3,352.50
Feb. 15	A. & J. D. Love	H. F. Carter & W.	4,500.00.	1,987.50
Feb. 20	Ellen Lord	L. C. Burnes	2,500.00.	1,837.50
Mar. 11	C. E. Langford	Mrs. J.D.Kurner	7,700.00.	3,150.00
Mar. 10	C. B. Long & Wife.	Albert C. Joy	1,100.00.	750.00
Mar. 26	J. W. Lewis & W.	K. R. Trottor	10,000.00.	6,375.00
Mar. 24	Jno. P. Little &W.	McAlster Carson	9,150.00.	5,612.50
Mar. 22	Lakeside Land Co.	J. J. Harrill	12,000.00.	6,000.00
Mar. 18	Walter Lamberth&W.	Marion A. Mull.	20,000.00.	7,500.00

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Feb.	23.	H. L. Hungerford & Wife.	Mrs.Lue Mackey	$ 12,750.00.	$ 8,500.00
Feb.	23 .	H. F. Haun & Wife.	Mike Copas	5,000.00.	4,350.00
Mar.	14 .	H. B. Hurt	R. Sams	1,000.00.	600.00
Mar.	19 .	G. Hubbard & Wife.	Estrance Branch	1,000.00.	637.50
Mar.	16 .	H. B. Hurt	Carlele Carpenter	5,000.00.	1,500.00
Apr.	12 .	H. B. Hurt	Carolina Company.	5,500.00.	2,025.00
Apr.	11 .	Block W.Humphery	Lee Kenney	2,000.00.	1,380.00
Apr.	9 .	A. W. Howard	C. M. Miller	3,500.00.	1,500.00
Apr.	7 .	P. C. Harkey	A. M. Rea & Wife.	1,150.00.	375.00
Apr.	4 .	J. A.Henderson &W.	M. W. Crocker	4,500.00.	3,183.75
Apr.	22 .	J. A. Henderson	Home RealEstateCo.	3,000.00.	1,200.00
Apr.	22 .	Home RealEstateCo.	G. S. Harrill	2,350.00.	3,900.00
Apr.	30 .	Mtn.States InspCo.	Ella Hardman	20,000.00.	13,125.00
Jan.	15 .	Interstates ImpCo.	J. L. Norwood	1,000.00.	975.00
Feb.	11 .	Interstate Imp.Co.	J. A. Arthur	8,000.00.	5,100.00
Feb.	5 .	Int.CottonProd.Co.	H. L. Schosing	6,000.00.	2,100.00
Mar.	16 .	Erby C. Rush	J. C. Blake	2,500.00.	1,125.00
Apr.	29 .	Interstate Imp.Co.	J. & C.B.Purser	2,250.00.	1,425.00
Apr.	28 .	Interstate MotorCo.	T. H. Webb	37,000.00.	19,500.00
Feb.	14 .	Lester Johnson &W.	Jas. M. Harry	1,000.00.	900.00
Jan.	22 .	F.E.& R.E.Jennings	J. D. Love	3,300.00.	1,950.00
Feb.	28 .	Frank J.Jones & W.	W. D. Lylery	5,900.00.	3,150.00
Feb.	23 .	Frank J.Jones & W.	Geo. V.Gilbert	1,300.00.	1,350.00
Feb.	2 .	Frank F. Jones	C. G. Drumnight	1,250.00.	1,350.00
Feb.	21 .	Mary E. Jockson	J. W. Bryant	2,375.00.	1,200.00
Mar.	25 .	Albert C.Jay & W..	G. E. Morse	1,550.00.	1,125.00
Apr.	11 .	Amey James	W.Armstrong & W..	1,800.00.	967.50
Apr.	23 .	Sidney Justice &W.	J. T. Williams	2,600.00.	900.00
Feb.	2 .	Laura N. Kimberlan	Clyde B. Spratt	6,350.00.	2,361.25
Mar.	15 .	P. M. King	Murray C.Alexander	2,500.00.	1,350.00
Mar.	31 .	S. O. King	A. E. Williams	3,000.00.	1,575.00
Mar.	24 .	Lee Kenney & Wife.	F. R. McNinch	6,500.00.	2,700.00
Apr.	16 .	Lee Kenney & Wife.	Bub Still	1,200.00.	675.00
Apr.	15 .	Lee Kenney	Morris E.Trotter.	2,000.00.	1,125.00
Apr.	1 .	Lee Kenney	H. C. SherrillCo.	5,100.00.	2,437.50
Apr.	29 .	Lee Kenney & Wife.	R.L.Templeton &W.	1,100.00.	631.25
Apr.	20 .	W. W. King	Alice E.St.Clair.	4,300.00.	2,250.00
Apr.	18 .	W. R. Johnston	T. J. Davis	3,650.00.	2,212.50
Jan.	7 .	C. C. King	E. J. Fears	12,500.00.	8,100.00
Jan.	6 .	W. C.Kind & Wife	R. D. Craver	1,000.00.	450.00
Feb.	11..	Ester Karmin	S.B.McGinn &Wife.	1,700.00.	600.00
Mar.	8 .	W. F. Kale	H. B. Heath	1,000.00.	495.00
Jan.	15 .	B.R.Lee & Wife	F. M. Simmons	6,250.00.	3,352.50
Feb.	15 .	A. & J. D. Love	H. F. Carter & W.	4,500.00.	1,987.50
Feb.	20 .	Ellen Lord	L. C. Burnes	2,500.00.	1,837.50
Mar.	11 .	C. E. Langford	Mrs. J.D.Kurner	7,700.00.	3,150.00
Mar.	10 .	C. B. Long & Wife.	Albert C. Joy	1,100.00.	750.00
Mar.	26 .	J. W. Lewis & W.	K. R. Trottor	10,000.00.	6,375.00
Mar.	24 .	Jno. P. Little &W.	McAlster Carson	9,150.00.	5,612.50
Mar.	22 .	Lakeside Land Co..	J. J. Harrill	12,000.00.	6,000.00
Mar.	18 .	Walter Lamberth&W.	Marion A. Mull.	20,000.00.	7,500.00

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	L 1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Apr.	7.	J. P. Little & W..	C. E. Lambeth	$ 2,500.00	$ 1,500.00
Apr.	20.	B.A.Lingle & Wife.	L.S. Boyd	8,500.00	5,118.75
Apr.	30.	W. A. Lutz & Wife.	C. C. Mallard	4,000.00.	1,875.00
Apr.	26.	Thos. A. Little	Mrs. M. M. Little.	2,000.00	2,850.00
Apr.	19.	J. M. Linley & W	S. Q. Barnes	2,100.00	450.00
Jan	18.	Mecklenberg Farm	J. I. King & W	1,000.00	450.00
Jan.	29.	R. E. L.Wingfield&W.	W.B. Reid & W	7,000.00	3,405.00
Jan.	19.	Evelyn W. Mowery	Mrs. Julia C.Grier	7,000.00	4,447.50
Feb.	28.	W.E.Moffett & W.	G. G. Ray & Wife.	5,250.00	2,175.00
Feb.	26.	W. M. Matthews	Melvin C. Propst.	1,500.00	1,200.00
Feb.	16.	Chas. R. Morse	H. M. Williams	4,000.00	1,875.00
Mar.	12.	E. J. Mathews & W.	ProgressiveRltyCo.	1,000.00.	475.00
Mar.	11.	A.P.Mull & Wife	Walter&Chas. Lambeth	60,000.00	39,000.00
Mar.	26.	McCoy Morit & W.	K. A. Raeford	4,000.00	2,175.00
Apr.	16.	A. M. Mallonee	J.B.Hawkins & W..	2,000.00.	1,500.00
Apr.	30.	J.L.Martin & Wife.	R.L.Martin & Wife	1,300.00	750.00
Apr.	30.	R.T.Martin & Wife.	J.L.Martin&Wife	2,400.00	825.00
Apr.	22.	C. M. Miller & W	H.E.Ritchey &W.	2,850.00	1,987.50
Apr.	16.	HoyleMcBryan & W	B. H. William &W.	2,100.00	697.50
Jan.	12.	McClung Rlty Co.	L. L. Abernathy	2,500.00	2,612.50
Jan/	26.	V. J. McDaniel	B. N. Richburg	4,000.00	937.50
Jan.	24.	A. L. McIntosh	Robt.Walker& Wife	1,700.00	825.00
Feb.	23.	Nola S. McKenna	J.C.&T.A.Pressley	4,000.00	1,437.50
Mar.	25.	J.H. McLean	Geo. Stevens	2,600.00	1,500.00
Apr.	4.	E. & L.H.McCall	Jennie May Terry.	6,300.00	3,750.00
Apr.	30.	C.A.McKean & Wife.	AnnieLAlexander	1,300.00	810.00
Apr.	28.	J. H. McAden	ContinentalMfg.Co.	1,000.00	2,062.50
Apr.	28.	J.H.McAden	ContinentalMfg.Co	1,000.00	1,687.50
Apr.	28.	S. Y. McAden	ContinentalMfg.Co.	1,000.00	1,875.00
Apr.	28.	S. Y. McAden	ContinentalMfg.Co.	2,500.00	1,987.50
Apr.	28.	S. Y. McAden	ContinentalMfg.Co.	1,000.00	1,725.00
Jan.	13.	W.C.McNeley & W.	S. W. Dandrege	2,000.00	1,500.00
Jan.	6.	W.W.Newell & Wife.	J. D. Martin	8,000.00	4,691.25
Feb.	3.	R. H. Noblet & W..	A. A. McCall	4,500.00	2,137.50
Feb.	2.	N.CharlotteRltyCo.	V. P. Helms	1,000.00	637.50
Feb.	23.	D.B.Neil & Wife	V. M. Stine	10,500.00	6,375.00
Feb.	23.	J. C. Newell & W	W. L. & B.Money	1,500.00	1,443.75
Feb.	16.	W. L. Nichol & W	Edith D.Harrison.	1,600.00	1,125.00
Mar.	26.	J. C. Newell	W. T. Shoemaker	1,660.00	1,312.50
Mar.	5.	Jas. F.Crowley	C. M. Farris	1,500.00	937.50
Jan.	21.	E.M.Orr & Wife	S. L. Duckett	8,737.00	5,756.25
Feb.	23.	Oakhurst Land Co..	Erby C. Reid	2,000.00	1,125.00
Jan.	19.	ProgressiveRltyCo.	H.W.Covington	1,000.00	562.50
Feb.	19.	ProgressiveRltyCo.	R. C. Covington	1,000.00	562.50
Jan.	18.	ProgressiveRltyCo.	Rosie MPatillo	1,000.00	562.50
Jan	18.	Progressive RltyCo.	E.C.UBanks & Wife.	1,000.00	562.50
Jan.	18.	ProgressiveRltyCo.	Sue M.Collins	1,250.00	562.50
Jan.	18.	ProgressiveRltyCo.	Daniel Draddy	1,000.00	562.50
Jan.	11.	ProgressiveRltyCo.	Alfred W.Dischim	1,000.00	712.50
Jan.	11.	ProgressiveRltyCo.	S.I.Furr & Wife	1,000.00	712.50
Jan.	11.	Martin C. Propst&W	H.H.& J. M. James	2,000.00	1,200.00
Jan.	11.	Martin C. Propst&W.	D.W.& C. Wallace.	1,500.00	900.00

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 to 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Jan.	10.	ProgressiveRltyCo..	W.M.Seller & Wife	$ 1,300.00	$ 712.50
Jan.	10.	ProgressiveRltyCo..	B.H.Fry & Wife	1,400.00	562.50
Feb.	15.	ProgressiveRltyCo..	Earnest Goodman	1,250.00	562.50
Feb.	2.	ProgressiveRltyCo..	N. W. Moss	1,250.00	562.50
Feb.	16.	ProgressiveRltyCo..	R. B. Hood	1,250.00	562.50
Feb.	14.	H. M. Pharr	Minnie L. Evans	3,000.00	2,175.00
Feb.	12.	Martin C.Propst &W.	M. & B. Williams	2,000.00	900.00
Feb.	11.	ProgressiveRltyCo..	J. W. Wiggins & W.	1,500.00	900.00
Feb.	8.	ProgressiveRltyCo..	V. N. Reynolds & W..	4,750.00	3,562.50
Feb.	8.	ProgressiveRltyCo..	J. C. Lee	1,250.00	562.50
Feb.	4.	ProgressiveRltyCo..	W. M. Yandle	1,250.00	562.50
Feb.	4.	Progressive RltyCo.	V. J. Shoemaker	1,250.00	562.50
Feb.	4.	ProgressiveRltyCo..	L. McB. White	1,250.00	562.50
Feb.	4.	ProgressiveRltyCo..	---------	1,000.00	562.50
Feb.	4.	ProgressiveRltyCo..	N. S. Mathews	1,250.00	562.50
Feb.	4.	ProgressiveRltyCo..	W. A. Sechrist	1,250.00	562.50
Feb.	4.	ProgressiveRltyCo..	E. C. Frank	1,500.00	562.50
Feb.	3.	Progressive RltyCo.	P. W. Mathewson	1,250.00	562.50
Feb.	3.	ProgressiveRltyCo..	P. B. Tucker	1,250.00	750.00
Feb.	23.	ProgressiveRltyCo .	Ethel Smith	1,250.00	562.50
Jan.	31.	J. W? Pharr & Wife.	Home Real EstateCo..	3,500.00	2,340.00
Jan.	29.	ProgressiveRltyCo..	F. H. Waspun	1,250.00	562.50
Jan.	29.	ProgressiveRltyCo..	E. R. Smith	1,250.00	562.50
Jan.	29.	ProgressiveRltyCo..	W. A. House	1,250.00	562.50
Jan.	29.	ProgressiveRltyCo..	J. M. House	1,250.00	562.50
Jan.	29.	ProgressiveRltyCo..	H.BerkHolder & Wife.	1,000.00	562.50
Jan.	28.	ProgressiveRltyCo..	M. D. Brannon	1,000.00	562.50
Jan.	25.	ProgressiveRltyCo..	Alfred Dischenes	1,450.00	562.50
Jan.	25.	ProgressiveRltyCo..	E. A. Adams & Wife	1,500.00	562.50
Jan.	25.	ProgressiveRltyCo..	W. J. McCathey & W	1,250.00	562.50
Jan.	25.	ProgressiveRltyCo..	P. J. Mathews & W.	1,500.00	562.50
Jan.	25.	ProgressiveRltyCo..	R. W. Robinson	1,450.00	562.50
Jan.	24.	W. L. Pope	E. W. Bender	4,000.00	2,062.50
Jan.	19.	Parry Wright & W.	J. T. Williams	1,000.00	840.00
Mar.	7.	ProgressiveRltyCo..	E. R. Hood	2,750.00	1,500.00
Mar.	4.	ProgressiveRltyCo..	Minnie R. Endley	1,200.00	562.50
Mar.	1.	Martin Propst	R. H. Thuling & W	1,200.00	825.00
Feb.	23.	ProgressiveRltyCo...	C. S. Oakley	1,250.00	562.50
Feb.	23.	ProgressiveRltyCo..	J. C. Bomar	1,250.00	562.50
Feb.	23.	ProgressiveRltyCo..	F. E. Robinson	1,500.00	562.50
Feb.	23.	Jno. R. Pharr	A. M. Berryhill	6,000.00	4,172.75
Feb.	21.	Charlotte Const.Co.	W. L. Pierce & Wife.	5,250.00	2,250.00
Mar.	12.	ProgressiveRltyCo..	W. J. Squire & Wife.	1,500.00	562.50
Mar.	12.	ProgressiveRltyCo..	Carry M. Tagger t /	2,500.00	900.00
Mar.	10.	Martin C. Propst	E. C. Alexander	1,800.00	1,162.50
Mar.	10.	Martin C. Propst	R. A. Williams & W	2,000.00	1,050.00
Mar.	10.	Martin C. Propst	L andy Geogan	1,650.00	1,012.50
Mar.	24.	ProgressiveRltyCo..	M. S. Macks	2,500.00	900.00
Mar.	17	C. L. Pasing & Wife	Alex Copeland	6,000.00	3,600.00
Mar.	17.	ProgressiveRltyCo..	E. J. Mathews	1,500.00	900.00
Mar.	17.	ProgressiveRltyCo..	L. J. Crough	2,500.00	900.00
Mar.	16.	ProgressiveRltyCo..	Earl Elson & Wife	1,250.00	562.50
Mar.	16.	ProgressiveRltyCo..	J. B. Sidemore & W	2,500.00	900.00

STATEMENT.

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 to 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Mar.	16.	ProgressiveRlty Co.	W. A. Rogers	$ 3,750.00	$ 1,687.50
Mar.	15.	ProgressiveRlty Co.	H. S. Bryan	1,000.00.	562.50
Mar.	12.	C. B. Porter & Wife	Robt. E.Helms & W.	6,700.00.	3,562.50
Apr.	11.	Martin C. Propst	A. W. Brown & Wife.	1,000.00.	337.50
Apr.	4.	O. S. Parry	Blanch A. Smith	5,500.00.	3,375.00
Apr.	4.	ProgressiveRlty Co.	Paul M.Sherril & W.	4,000.00.	1,800.00
Apr.	4.	ProgressiveRlty Co.	F. E. Robinson	2,500.00.	900.00
Apr.	2.	Martin C. Propst	R. R. Dobson	1,125.00.	750.00
Apr.	2.	W. R. Phillips & Wife	Louise B. Wait	7,750.00.	4,125.00
Apr.	30.	ProgressiveRlty Co.	W. L. Shuping	2,500.00.	900.00
Apr.	30.	ProgressiveRlty Co,	E. A. Lawing	2,500.00.	900.00
Apr.	26.	Montrose D. Phifer	Martha C. Cooke	1,200.00.	900.00
Apr.	22.	Progressive Rlty Co..	J. H. Bobbitt	2,500.00.	900.00
Apr.	23.	C. B. Porter	S. R. Watkins	2,000.00.	1,125.00
Apr.	19.	S. V. Pitts & Wife	Charlotte Const.Co.	4,500.00.	3,000.00
Jan.	24.	M. C. Quinn	H. E. Deese & Wife.	1,000.00.	337.50
Feb.	1.	J. P. Quarels & Wife.	J. S. Sabistin	4,500.00.	3,000.00
Jan.	5.	C. H. Robinson & W...	W. H. Simpson	1,250.00.	705.00
Feb.	11.	M. B. Rose	The Carolina Co.	3,000.00.	1,395.00
Feb.	7.	J. S. Rust	J. S. McQuirter	2,000.00.	1,980.00
Feb.	1.	W. M. Russell & Wife.	S. E. Friday	3,320.00.	1,995.00
Jan.	26.	W. D. Rogers & Wife	Oakhurst Land Co.	1,500.00.	1,350.00
Jan.	26.	B. M. Richburg & W	E. J. McDaniel	18,500.00.	3,187.50
Mar.	1.	Drafds Renfrow & W.	John T. Smith & W..	4,750.00.	3,150.00
Feb.	26.	Mrs. E. M. Rogers	Eugenia Russell	2,800.00.	1,833.75
Feb.	26.	G. H. Brown & Wife	Erby C. Reid	1,000.00.	750.00
Feb.	2.	J. Russo	J. L. Fulbright &W.	4,150.00.	2,392.50
Mar.	9.	Royal Land Co.	Tom Dodd & Wife	2,000.00.	1,125.00
Mar.	17.	H. A. Rafield & Wife.	C. L. Parsons	4,000.00.	2,387.50
Mar.	17.	W. D. Rock & Wife	H. A. Quickel	1,700.00.	1,200.00
Mar.	16.	Rosemont Company	J. M. Mathews	3,000.00.	1,811.25
Mar.	16.	Rosemont Company	M. N. Wilson	2,500.00.	1,968.75
Mar.	16.	Rosemont Company	Lottie N. Reid	2,500.00.	1,968.75
Apr.	12.	M. B. Rose & Wife	R. E. Fann	1,750.00.	825.00
Apr.	8.	W. B. Roberts	Erby C. Reid	3,000.00.	2,655.00
Apr.	4.	F.E.Robinson & Wife	ProgressiveRlty Co.	1,450.00.	562.50
Apr.	29.	Erby C. Reid	Thomas Watkins	5,000.00.	3,307.50
Apr.	28.	Royal Land Co.	Henry Dorden	2,250.00.	1,125.00
Apr.	23.	Robinson Spring Co.	Jennis K. Spencer	6,750.00.	2,175.00
Jan.	18.	Suburban Rlty Co.	L. J. Thee	1,000.00.	600.00
Jan.	18.	Suburban Rlty Co.	Manny J. Mullis	1,500.00.	750.00
Jan.	18.	Simmons Const. Co.	Rush Lee	6,000.00.	3,352.50
Jan.	18.	Suburban Rlty Co.	Jas. W. Brown	1,000.00.	600.00
----------	.	W. S. Stancil & Wife.	E. M. Hannon	2,000.00.	1,350.00
Jan.	11.	Suburban Rlty Co.	Dressie May Bost	1,000.00.	600.00
Jan.	7.	W. W. Shoals & Wife	T. M. Starnes	7,500.00.	6,825.00
Jan.	8.	Madge W. & F.D.Smith.	Claudia H. Oates	16,000.00.	7,875.00
Jan.	8.	Stevens Company	E. Kimall	1,000.00.	937.50
Jan.	5.	J. M. Sammons & Wife.	M. B. Overcash	1,250.00.	750.00
Jan.	21.	Suburban Rlty Co.	T. E. Wingate	1,000.00.	600.00
Jan.	29.	Suburban Rlty Co.	R. A. Thomason & W.	3,000.00.	1,950.00
Jan.	19.	W. M. Simms	J. L. Kishbur & W	2,000.00.	1,200.00
Mar.	5.	K.D. & M. M. Schoult.	Paul M. Efird.	28,750.00.	13,500.00

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	L 1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Mar.	5.	V. M. Stein & Wife	F. A. Owen & Wife	$10,750.00	$ 2,375.00
Mar.	4.	Suburban Rlty Co.	Barbaria Atkins	1,000.00.	750.00
--------		Suburban Rlty Co.	J. C. Stokes	1,000.00.	750.00
Feb.	23.	I. W. Steward & Wife.	F. D. Lethco	12,000.00.	12,375.00
Feb.	21.	R. K. Swain & Wife	R. B. Williamson	4,000.00.	3,000.00
Mar.	15.	Suburban Rlty Co.	R. H. Lafferty	2,500.00.	1,350.00
Mar.	14.	J. D. Summerlin & W..	M. G. Hager	2.500.00.	2,205.00
Mar.	29.	Salvation Army	E. C. Griffith	9,000.00.	4,687.75
Mar.	29.	Addie R. Summers	Alida L. Oliver	1,200.00.	825.00
Mar.	28.	W. S. Stancil & Wife.	Alex Phifer	11,000.00.	3,375.00
Mar.	26.	R. W. Smith & Wife	W. P. Rierson	6,000.00.	1,312.50
Mar.	25.	Geo. Stevens & Wife	J. L. McClintock	2,750.00.	1,575.00
Mar.	21.	W. R. Staples & Wife.	V. B. Higgins	2,800.00.	5.575.00
Mar.	16.	Stevens Company	Myers Park Co.	1,750.00.	1,500.00
Mar.	16.	Stevens Company	Myers Park Co.	1,750.00.	1,125.00
Apr.	6.	V. L. Studebaker &W	E. C. Griffith	3,500.00.	2,512.50
Apr.	2.	Suburban Rlty Co.	J. D. Kluttz	6,000.00.	3,375.00
Apr.	1.	Myers Schwartz & W.	Charlotte Loan Co.	1,700.00.	1,125.00
Mar.	31.	J. D. Short & Wife	Tucker & Laxton	3,800.00.	2,595.00
Mar.	31.	Suburban Rlty Co.	Southern EngringCo.	2,500.00.	1,200.00
Apr.	29.	Suburban Rlty Co.	L. J. Kee	1,000.00.	637.50
Apr.	29.	Suburban Rlty Co.	C. R. Austin	1,800.00.	750.00
Apr.	22.	W. M. Smith Co.	M. V. Hawkins	2,300.00.	1,275.00
Apr.	23.	H. C. Sherrill Co.	W. S. Cunningham	3,400.00.	1,500.00
Apr.	23.	J. L. Spencer & Wife.	E. S. DeLaney	2,000.00.	1,980.00
Apr.	22.	F. M. Summers & Wife.	Lucy W. Lyder	4,000.00.	3,375.00
Apr.	19.	A. E. Spears & Wife	Arthur J. Moore	2,000.00.	1,627.50
Apr.	19.	Benjiman Smith & W.	O. J. Thies	8,500.00.	1,665.00
Apr.	19.	Stevens Company	F. E. & C. H. Era	1,500.00.	1,275.00
Apr.	16.	Jas. B. Sing	H. M. Wade	3,250.00.	1,675.00
Jan.	15.	Thies-Smith Rlty.Co..	Mrs. Ella Ward	2,400.00.	1,740.00
Jan.	14.	Floyd C. Todd	R. G. Campbell & W.	1,000.00.	562.50
Jan.	27.	A. G. Trottor & Wife.	The Charlotte Co.	10,000.00.	6,000.00
Jan.	25.	O. J. Thies & Wife	Bostic Candy Co.	4,000.00.	2,400.00
Jan.	22.	O. J. Thies & Wife	Bostic Candy Co.	5,000.00.	3,000.00
Jan.	22.	Alice & W. M. Taft	Ellenor Simmons	17,000.00.	11,250.00
Jan.	21.	W. V. Thoms & Wife	John P. Kennedy	8,500.00.	3,750.00
Feb.	28.	Ira B. Turner & Wife.	P. J. Maulins	3,500.00.	2,250.00
Feb.	9.	I. D. L. Turner	Will Howser	1,500.00.	900.00
Mar.	15.	M. C. Tucker & Wife	J. R. Thomas & Wife	3,250.00.	937.50
Mar.	31.	Turner Land Co.	Ritch K. Epps	3,700.00.	2,025.00
Apr.	12.	T. J. Turbyfield	R. S. Gorman & W	3,250.00.	2,475.00
Apr.	11.	Turner Land Co.	J. L. Belk	2,175.00.	2,400.00
Apr.	26.	R. N. Tucker & Wife	City Realty Co.	2,500.00.	1,125.00
Apr.	22.	C. D. Talliaferro	G. W. Stegal	1,750.00.	1,012.50
Apr.	22.	O. F. Theis & Wife	J. L. Kurans	2,500.00.	1.687.50
Apr.	30.	S. B. Tanner & Wife	J. D. & N. W. Woodside.	8,000.00.	3,330.00
Mar.	1.	United Rlty Co.	Martin Propst	2,400.00.	1,500.00
Feb.	5.	J. A.Vity & Wife	W. C. Pressley & W,	2,700.00.	1,800.00
Jan.	12.	Mrs. Emmy G.Vreeland.	W. Davis & Wife	1,100.00.	675.00
Jan.	26.	Aberham White	W. Lewis & Wife	2,000.00.	1,125.00

DATE of CONVEYANCE Mo.	Day.	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Jan.	24.	E. L. Wilson & Wife	S. W. Edwins & W.	$ 4.719.00	$ 2.636.25
Jan.	22.	Geo. E. Wilson	Joe B. Efird	12,500.00	11,775.00
Jan.	19.	S.Wittkossky Estate	S. & A. White	40,000.00	37,500.00
Mar.	2.	H. R. Walden & Wife	J. M. Saunders & W.	2,500.00	1,627.50
Mar.	2.	Charlotte Const. Co.	J. L. Widdit	4,000.00	2,906.25
Mar.	3.	Charlotte Const. Co	J. P. Wiggins & W	4,500.00	3,661.25
Feb.	24.	D. H. Ward & Wife	W. H. & P. S. Maudy	2,200.00	1,462.50
Feb.	18.	L. J. & J.R.Wentz	The Charlotte Co.	3,200.00	1,500.00
Apr.	5.	J. W. Whitlow & Wife.	B. W. Whitlow	1,000.00	2,437.50
Apr.	4.	T. C. Wilson	H. C. Henderson	16,000.00	9,868.25
Apr.	1.	J. H. & W. R. Wearn	J..L. Greigory	1,500.00	750.00
Apr.	1.	Sam Wallas	D. Karros	5,000.00	2,250.00
Apr.	1.	John White	W. M. Roseboro	1,200.00	637.50
Apr.	16.	J. L. Wingate & Wife.	Nanny H. Padgett	2,600.00	1,612.50
Apr.	18.	T. E. Wingate & Wife.	Suburban Rlty Co.	3,000.00	1,740.00
Jan.	18.	Geo. E. Wilson	F. M. Simmons	3,500.00	2,907.00
Jan.	13.	A. J. Williams & W	Minnie E. Miller	1,500.00	1,035.00
Jan.	4.	L. H. Wills & Wife	J. L. Holly	2,800.00	981.25
Jan.	4.	W. E. White & wife	Irvin D. Kimball	7,300.00	3,468.75
Feb.	7.	K. E. Ward	J. B. Wilkie	5,000.00	4,375.00
Feb.	3.	E. M. Williams	Steve Pappas	5,500.00	3,000.00
Feb.	2.	J. A. White & Wife	E. L. Gardner	1,200.00	750.00
May	30.	J. W. Austin & Wife	Lee Kenney	1,100.00	450.00
May	21.	T. A. Adams	A. C. Fite	9,000.00	7,875.00
Jan.	3.	J. A. Austin & Wife	Suburban Rlty. Co.	1,100.00	750.00
June	9.	C. P. Ausbin	H. C. Sherrill	1,100.00	900.00
June	11.	T. T. Allison & Wife.	Margaret H. Howard.	10,000.00	5,250.00
June	18.	W. S. Alexander & W	M. Sams	1,000.00	371.25
June	18.	Bessie N. Allison	T. E. Elliott	3,000.00	2,700.00
June	20.	Victor R. Allison	J. E. Brantley &W	3,500.00	2,171.25
May	20.	Jas. Bracy	J. B. Groom & wife.	2,000.00	10,012.50
May	31.	J. F. Brown & wife	Int. Imp. Co.	1,000.00	600.00
May	28.	W. F. Beam	J. L. Lyles & wife.	12,500.00	7,125.00
May	25.	J. F. Boyd & Wife	----------	3,000.00	1,238.50
May	24.	Jno. S. Blake	Fred D. Austin	17,500.00	9,450.00
May	23.	A. B. & C. M. Bolton.	Lewis B. Vreeland	1,700.00	1,800.00
May	25.	Rays.J. Byers & Wife.	Henry J. Douglass	1,800.00	1,125.00
May	12.	R. C. Robertson & W	W. M. Simpson & W	3,000.00	1,837.50
May	18.	S. Q. Barnes	E. L. Yandle	2,800.00	1,350.00
May	9.	Jno. F. Blythe & W	Lee Kenney	1,200.00	1,125.00
June	24.	A. W. Brown & Wife	H. A.Haas	3,500.00	1,875.00
June	27.	S. Q. Barnes & Wife	J. B. Bassett	3,500.00	2,058.50
June	29.	J. A.Baldwin & Wife	Mrs. V. C. Jones	1,500.00	937.50
May	20.	Elks Home Company	Home Real Esate Co.	30,500.00	26,125.00
May	26.	Edwin Crowley & Wife.	B. F. Williams	7,500.00	2,625.00
May	24.	L. C. Cook & Wife	Oakhurst Lumber Co.	1,000.00	675.00
May	23.	E. T. Cochran & Wife.	J. L. Hart	1,000.00	637.50
May	16.	F. O. Clarkson	J. R. Davis	1,825.00	1,260.00
June	1.	W. R. Cox	Mrs. J. L. Pickard.	7,500.00	4,038.50
May	24.	R. L. Gibbon	R. D. Craver	1,700.00	1,150.00
May	14.	Crator Charlotte Co	H. L. Taylor	1,000.00	600.00
May	3.	J. C. Goodman & Wife.	Henry Dockery	2,900.00	1,500.00
June	1.	E. W. Gurley & Wife	Mrs. M. A.Thomas	1,250.00	750.00

DATE OF CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
June	18.	Geo. H. Groover & W	E. W. Bender	1,000.00	375.00
June	30.	R. L. Gibbon & Wife	P. H. Efird & Wife	3,500.00	2,225.00
May	30.	L. W. Helms & Wife	W. A. Matheson	1,850.00	825.00
May	27.	E. & C. D. Husman	J. D. Elliott	16,500.00	6,663.75
May	27.	Kate W. Hall	C. W. Gallagher	5,000.00	2,392.50
May	25.	J. F. Ham & Wife	J. W. Barber	2,000.00	1,275.00
May	24.	R. N. Hood & Wife	L. C. Cook & Wife	4,500.00	1,500.00
June	6.	A. H. Crowell	B. D. Heath Jr.	3,000.00	2,085.00
June	4.	The Charlotte Co.	F. M. King & Wife	1,450.00	1,012.50
June	3.	The Charlotte Co.	Paul W. Mathewson	7,000.00	3,000.00
June	7.	K. R. Cherry	J. F. Elliott	1,750.00	925.00
June	15.	John S. Clifford &W	Lee J. Smith	8,500.00	3,152.50
June	15.	Charlotte Const. Co..	A. J. Garrison	4,000.00	2,250.00
June	16.	Saxby Chapman & Wife.	F. M. Davis & Wife	6,000.00	3,375.00
June	16.	Charlotte Const. Co..	B. L. Suggs	4,000.00	2,250.00
June	16.	Charlotte Const. Co..	J. A. C. Woodward	4,500.00	2,625.00
June	20.	R. D. Craver & Wife	Mrs. Sarah S. King	2,500.00	2,643.75
June	22.	Continental Secu.Co..	A. D. Watts	1,000.00	600.00
June	24.	Charlotte Const.Co.	A. T. Allan & Wife	9,500.00	3,750.00
June	24.	Charlotte Const. Co..	W. E. Parker	7,800.00	4,125.00
May	20.	R. M. Dunnavant	C. F. Katto	4,750.00	1,826.25
May	14.	J. R. Davis & Wife	A. M. Mallonee	2,150.00	986.25
Jan.	6.	R. R. Dodson	W. H. Webster	1,000.00	637.50
June	28.	D. W. & J.A.Durham	Aberm White	1,500.00	937.50
May	24.	C. R. Edwards & Wife.	Continental Mfg. Co..	6,700.00	4,487.50
May	10.	E. H. France & Wife	F. A. Culp & Wife	11,000.00	6,525.00
May	5.	Frank E.Furgeson & W.	W. W. Davis	5,500.00	2,913.75
June	9.	W. D. Fesperman	Martin C. Propst	1,000.00	900.00
June	15.	Earney L. Fite	W. L. Small & Wife	4,500.00	2,437.50
May	23.	J. M. Howard & Wife	H. W. Cobington	1,000.00	900.00
May	17.	T. E. Cumby & Wife	Walter M. Lambeth	20,000.00	9,375.00
May	18.	W. P. Harkey & Wife	S. M. Hart	10,650.00	5,445.00
May	19.	W. F. Harding	Suburban Rlty Co.	1,150.00	600.00
May	3.	W.B.Harrington & Wife	Mrs. M. B. Davis	8,750.00	4,627.50
May	7.	R.S.Hutchinson & W.	Chas. C. Hutchinson	2,000.00	8,002.50
May	9.	H. B. Heath	A. W. Alexander	1,500.00	495.00
June	6.	D. J. Hamby & Wife	Mary R. Todd	10,500.00	5,250.00
June	8.	Home Real Estate Co	Elliott T. Perkins	3,700.00	2,100.00
June	1.	L. J. Howard & Wife	Thos. T. Allison	2,000.00	1,500.00
June	28.	T. E. Hamby & Wife	The Steven Co.	1,500.00	1,125.00
June	2.	J. B. Ivey & Wife	J. L. Taylor	1,600.00	1,125.00
May	2.	Edwin E. Jones & Wife	Myers Park Home Co.	8,000.00	3,212.50
June	9.	C. S. Jarrett & Wife.	G. S. Champion & W	2,000.00	1,556.25
May	31.	W. A. Killiam & Wife.	J. F. Brown	1,000.00	600.00
May	27.	J. L. & G.C.Kirkman	Stough Miller & W	3,500.00	1,725.00
May	25.	G. C. Kimball & Wife.	R. L. Fox & Wife	1,000.00	356.25
May	25.	J. C. Kale & Wife	F. L. Austin & Wife	1,400.00	675.00
May	7.	Annie W. King	S. C. Rogers	3,750.00	1,500.00
June	10.	Thos. F. Kerr & Wife.	W. C. Thomas	2,650.00	945.00
June	9.	L. Arenson	H. C. Sherrill & Co..	1,000.00	371.25
June	18	B. Rush Lee & Wife	W. J. Chambers	3,500.00	2,955.00

STATEMENT.

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	L 1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
May	19.	Marion McDaniel	D. L. Sing	3,000.00	1,905.00
May	14.	Bessie McQuirter	Margaret J. Julian.	2,000.00	991.00
May	2.	J. H. McLean	George Stevens	2,300.00	1,500.00
May	4.	McClung Realty Co.	J. O. Williams &W	1,800.00	1,050.00
May	7.	J. L. McClinton & W	H. B. Heath	1,000.00	375.00
June	7.	Rosie McClure	J. E. Wilson	1,600.00	1,132.50
Jan.	9.	W. T. McLeod & Wife	J. W. Fox & Wife	2,600.00	1,575.00
May	2.	J. H. McLean	George Stevens	2,300.00	1,575.00
May	2.	Myers Park Company	Agnes G. Dowd	8,000.00	4,312.50
May	5.	Chas. H. Miller	C. J. Montford & W.	6,000.00	3,750.00
May	5.	Dolly J. Meacham	Mable M. Calvint	11,000.00	5,610.00
May	20.	P. B. Munday & Wife	Helen B. Carroway	4,000.00	1,591.25
May	20.	W. T. Martin	Oscar Belk	3,250.00	1,800.00
May	23.	Cecil B. Maxwell	L. B. Vreeland	1,800.00	1,125.00
May	27.	Julia E. Morris	R. M. Gallant	10,500.00	6,375.00
--------		A. & J. H. Mayer	Queen City Rlty Co.	1,000.00	637.50
--------		Miss Bertha Morris	R. M. Gallant	3,000.00	1,312.50
June	3.	P. W. Matheson	Lee D. Hall	4,500.00	675.00
June	7.	Mecklenberg Farm	G. T. Graham	3,650.00	2,250.00
January	10.	H. A. Mullis & Wife	Raymond Holbrook	2,300.00	1,575.00
June	16.	Myers Park Co.	Anna P. Sigman	17,000.00	1,500.00
June	16.	Myers Home Co.	Myers Home Co.	2,630.00	1,500.00
June	21.	Cameron Morrison	J. O. Walker	14,500.00	8,645.00
June	1.	N. Charlotte Rlty Co.	S. A. Mangum	10,000.00	562.50
June	8.	Joseph Nosser	Miss Appie Fogle	4,200.00	2,966.25
May	9.	C. S. Oakley & Wife	Progressive RltyCo.	3,500.00	6,000.00
May	28.	Progressive Rlty Co.	E. F. Rimmer & Wife	2,500.00	1,500.00
May	25.	M. C. Propst & Wife	M. V. Hawkins	2,000.00	2,013.75
May	23.	M. D. Phifer	D. C. Whitaker &W.	1,500.00	750.00
May	11.	A. Foster Phifer	W. S. Stancel	5,000.00	2,200.00
May	16.	O. S. Parry	V. J. Carlington &W	1,650.00	675.00
May	16.	Raymond T. Pullman	Guss Akerman	2,700.00	1,175.00
May	7.	Progressive Rlty Co.	The Charlotte Co.	1,000.00	750.00
May	12.	Shuford Peeler & Wife.	W. J. Scott & Wife.	1,400.00	808.50
June	1.	Progressive Rlty Co.	Alice K. Chapin	4,500.00	225.00
June	13.	J. C. Pressley & W	J. W. Bemmick	5,000.00	2,250.00
June	18.	J. C. Pressley & W	M. F. Burt	1,500.00	1,875.00
June	16.	Queens Home Co.	J. A. Yarborough	14,500.00	7,761.25
May	23.	E. N. & Claude Reese.	Anna H. Hickson	4,500.00	3,375.00
June	3.	L. B. Rogers	D. H. Rogers	1,800.00	1,792.50
June	13.	R. W. Roberts	Lee Kenney	2,000.00	562.50
June	14.	Rosemont Company	T. J. Davis	2,750.00	1,500.00
June	14.	Rosemont Company	T. J. Davis	2,760.00	1,500.00
June	14.	Rosemont Company	T. J. Davis	2,960.00	1,500.00
June	14.	Rosemont Company	T. J. Davis	2,760.00	1,500.00
June	14.	Rosemont Company	T. J. Davis	2,760.00	1,500.00
June	15.	Royal Land Company	King Willis & Wife.	2,000.00	1,125.00
June	16.	Rosemont Company	Cal G. Cooke	2,000.00	1,125.00
June	28.	Rosemont Company	D. J. Hunter	2,500.00	1,500.00
June	28.	M. B. Rose	Carry L. McLean	1,900.00	1,125.00
May	31.	Maude R. Sams	Caldwell TredwickCo	1,000.00	375.00
May	30.	T. B. Smith & wife	C. L. Mason	2,150.00	825.00
May	28.	Myers Schwartz	Queen City Rlty Co.	1,725.00	1,125.00
May	27.	H. J. Spencer & Wife.	R. H. Lafferty	2,000.00	1,256.25

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day.	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
May	27.	Suburban Rlty Co.	J. V. Conn	5,000.00	1,650.00
May	25.	Suburban Rlty Co.	W. E. Crowder	1,000.00	750.00
May	24.	Mary C. Smith	O. J. Thies	2,500.00	1,556.25
May	24.	W. M. Smith	Jno. Frazier	1,700.00	825.00
May	23.	Stevens Company	Fannie E. Hinsely	2,000.00	1,500.00
May	19.	J. C. Stancel	H. & P. Vreeland	2,500.00	1,875.00
May	13.	Stevens Company	E. G. Wilson	1,600.00	900.00
May	15.	Iseral Schwartz & W	M. J. O'Neil	5,500.00	2,100.00
May	16.	Suburban Rlty Co.	J. C. Harris	1,000.00	750.00
May	18.	W. A. Hevner & Wife	J. W. Sultan & Wife.	5,000.00	2,475.00
May	18.	Stevens Company	Edna A. Houseman	3,500.00	1,875.00
May	7.	H. C. Sherrill Co.	Mathew Carose	5,800.00	1,676.25
May	9.	Suburban Rlty Co.	C. T. Barrier & Wife	1,000.00	540.00
May	13.	Susie Spector	Sam Levy	3,200.00	1,886.25
June	2.	H. C. Sherrill Co.	P. R. Yancey	5,500.00	525.00
June	4.	C. F. Shuman & Wife	F. P. Crowley	5,750.00	375.00
June	7.	Susie Spector	P. Katzan	5,700.00	2,625.00
June	9.	Stevens Company	C. A. Scott	1,500.00	600.00
June	16.	Stevens Company	Estell Kelly	1,500.00	660.00
June	15.	Geo. Stevens & Wife	E. J. Kestler	3,000.00	1,875.00
June	21.	J. W. Stinson & Wife.	Mrs. Jennie C. Bell.	9,000.00	4,875.00
June	22.	Stevens Company	Home Real Estate Co.	1,500.00	937.50
Juhe	22.	Stevens Company	Home Real Estate Co.	1,500.00	937.50
June	22.	Jno. T. Smith & Wife.	Queen City Rlty Co..	1,500.00	1,125.00
June	28.	Stevens Company	T. E. Hensley	3,250.00	2,250.00
June	28.	Suburban Rlty Co.	Stevens Company	3,500.00	2,250.00
June	18.	Stevens Company	T. E. Hensley	2,500.00	1,125.00
June	30.	Robert J. Small & W..	W. J. Walls	5,200.00	1,991.25
May	5.	Farm Land Company	Annie L. Taylor	4,650.00	487.50
May	6.	J. E. Thomas & Wife	Thomasboro Co.	1,000.00	675.00
May	14.	Advent Church	Mrs. C. J. McCarver.	1,350.00	675.00
May	14.	Farm Land Company	S. B. Alexander Jr..	3,000.00	862.50
May	23.	Traders Land Co.	W. J. Brown	16,000.00	8,310.00
May	26.	W. H. Twittie	Oakhurst Land Co.	2,000.00	882.00
-------		C. W. Teeter & Wife	O. W. Lawing	3,000.00	1,875.00
June	17.	A. T. Thomas	Frank B. McGinn	2,500.00	1,687.50
June	21.	O. J. Thies & Wife	Security Invest.Co..	17,500.00	10,450.00
June	22.	J. L. Taylor & Wife	Jno. T. Swink	1,500.00	1,125.00
June	28.	Farm Land Co.	Jno. W. Creig & W	2,900.00	487.50
May	23.	United Rlty Co.	Lee Kenney	1,500.00	825.00
May	9.	J. A. &W.E.Walwick	Florence I. Little	5,000.00	2,725.00
May	11.	J. W. Wolf & Wife	J. H. Thorp	1,500.00	563.50
May	11.	E. G. Wilson & Wife	Suburban Rlty Co.	3,500.00	1,125.00
May	18.	Oscar White & Wife	J. R. Hemphill	2,000.00	1,086.25
May	18.	W. C. Whitmire & W.	D. W. Austin	1,000.00	495.00
May	23.	Ethel W. Winters	J. M. Turner & Wife.	5,250.00	2,887.50
June	2.	J. K. Wolf & Wife	J. E. Shaffner & W..	2,500.00	825.00
June	2.	J. K. Wolf & Wife	Della Vattio	2,100.00	618.75
June	3.	M. E. Walker & Wife	A. D. Neil	3,000.00	750.00
June	4.	R. B. Williamson	C. F. Shuman	1,500.00	600.00
June	7.	C. W. Wise	J. D. Short	8,000.00	4,462.50
June	8.	W. H. Wood & Wife	C. T. Stroupe & Wife	2,500.00	1,682.50
June	17.	J. K. Wolf & Wife	H. A. Lawing	3,486.00	1,237.50
June	17.	A. & J. W. White	Harry Washington &W.	1,000.00	750.00

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day.	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
June	25.	Elizabeth L. Wilson.	J. C. Harley & Wife.	8,000.00	3,562.50
June	28.	Aberm White	Bertie E. Horton	1,750.00	900.00
May	16.	V. J. Yelvington	Q. S. Parry	5,900.00	2,250.00
May	18.	E. L. Yandle	S. Q. Barnes	3,000.00	1,856.25
Jan.	24.	Hustin Frazier	C. L. Hurdle	2,300.00	53.00
Jan.	19.	J. W. Hayes & Wife	W. H. Haun	1,600.00	3,000.00
Jan.	15.	Wallace Johnston & W.	W. M. Brawley	108.50	795.00
Jan.	10.	J. E. Narkit & W.	G. W. Kale & Wife	1,500.00	1,392.00
Jan.	3.	Dewhit Barley & W.	Graham C. Taylor	1,472.00	874.50
Mar.	23.	T. E. Cochran	J. A. Wilson	2,250.00	206.25
Apr.	5.	J. B. McLauflin &W	R.L.& S.J.Biggers	5,962.50	3,140.25
Jan.	6.	W. S. Parker & W.	M. L. Archer	2,300.00	1,125.00
Feb.	7.	Louise W. Sloan	H. & Annie Martin	1,000.00	525.00
Mar.	1.	S. O. Torrence	P. K. Goodman	1,200.00	525.00
Mar.	7.	Dilling Cotton Mills.	Dilling Linden Co.	41,500.00	14,208.75
Mar.	7.	Linden Mfg. Co.	Dilling Linden Co.	41,500.00	11,975.75
Mar.	9/	L. G. Caldwell & W	S. H. Washum	1,550.00	1,602.75
Apr.	4.	M. C. Johnston	J. R. Nantz	2,000.00	1,822.50
Apr.	22.	Archibal Currie	L. B. Long	2,250.00	1,890.00
Apr.	22.	R. M. Armon Heirs	L. B. Long	7,500.00	1,687.50
Apr.	22.	M. L. Thompson	L. B. Long	3,447.50	2,917.50
June	11.	J. Hope Adams	Mrs. L.E.Johnson	1,000.00	600.00
June	11.	Sawers Estate	Lillie E. Sawers	1,000.00	375.00
Feb.	2.	Julia E. Bradford	J. W. Auton, Jr.	1,600.00	1,200.00
Mar.	2.	S. L. Mullin & Wife.	Bankof Huntersville.	1,250.00	750.00
Mar.	24.	Mrs. M. E. Hunter	Alley Starnes	1,070.25	461.25
Mar.	24.	Mrs. M. E. Hunter	Minnie E. Hunter	2,500.00	900.00
June	7.	N. C. Frazier & W.	K. W. Fite & Wife	2,500.00	1,500.00
June	2..	M. T. & T. J.Brdman. (Brackman)	Anchor Mills	1,800.00	1,125.00
June	20.	J. L. Slaton	Lewis Long	1,400.00	525.00
Jan.	18.	J. D. McCall	W. D. Cox	2,907.00	1,987.50
Jan/	29.	Mrs. Edna Baker	J. C. Mooney	1,200.00	1,669.75
Feb.	7.	T. L. Sellers & Wife.	Plummer Stewart	1,550.00	1,550.00
Feb.	14.	Mrs. S. E. Beam	W. A. Cathey	3,000.00	1,500.00
Mar.	16.	J. E. Dunn & Wife	W. F. Smith	2,250.00	4,387.50
Mar.	17.	M. A. Fetherston	W. T. Robinson	3,300.00	1,326.75
Mar.	19.	R. W. Elliott & W	E. H. Holler	1,500.00	874.50
Apr.	23.	E. O. Isenhour	E. P. Isenhour	2,500.00	238.50
Jan.	10.	E. T. Bost	H. A. Smith	8,690.00	3,725.25
Feb.	15.	Aldie House	Catawba Mfg. Co.	2,500.00	2,625.00
Feb.	23 .	J. W. Alexander	Oakhill Stock Farm.	4,395.00	1,548.75
Feb.	1.	J. N. Abernathy	A. F. Fowler	4,500.00	4,297.50
Feb.	1.	C. F. Fowler & Wife.	H. L. Bradford	4,500.00	4,297.50
Feb.	1.	R. L. Stevens & Wife.	Catawba Mfg. Co.	5,000.00	3,281.25
Feb.	1.	Catawba Mfg. Co.	R. L. Stevenson	7,000.00	5,040.00
Mar.	2.	J. R. Hutchinson &W.	Bryce O. Torrence	2,300.00	1,207.50
------	.	J. F. Gamble & Wife.	W. L. Gamble	5,000.00	6,633.75
Apr.	2.	R. M. Kidd & Wife	Richard Stillwell	4,000.00	1,050.00
Apr.	30 .	Citizens L. & T.Co..	P. B. Mundy	3,000.00	1,601.25
May	20.	P. B. Mundy & Wife	Helen B. Carroway	4,000.00	1,601.25
------	.	J. M. Elliott	Catawba Mfg. Co.	2,000.00	1,181.25
Jan.	3.	W. B. Parks & Wife	Catawba Mfg. Co.	7,000.00	2,362.75

S T A T E M E N T .

DATE of CONVEYANCE Mo.	Day	GRANTOR	GRANTEE	1-1-'21 6-30-'21 Consi'n.	1921 ASSESSED VALUE
Jan.	3.	W. B.Parks & Wife	Catawba Mfg. Co.	4,500.00	1,383.75
Jan.	3.	W. B. Parks & Wife	Catawba Mfg. Co.	4,500.00	1,366.50
Jan.	3.	Miss Maggie Parks	J. E. Morris	1,500.00	1,856.25
Jan.	6.	J. L. Parks & Wife	Catawba Mfg. Co.	28,000.00	12,048.75
Jan.	7.	Catawba Mfg. Co.	W. E. Starnes	4,500.00	3,510.00
Jan.	25.	S. K. Burnett & W.	J. W. Todd & Wife	3,200.00	1,923.75
Feb.	3.	J. C. Simmons	F. M. Perkins	11,000.00	4,218.75
Feb.	17.	M. M. Hilton & Wife	J. S. Yandle	1,180.00	776.25
Mar.	15.	John R. Pharr	R. D. Coward	15,000.00	3,815.00

Subscribed and sworn to before me this 7th day of January, 1922.

[SEAL.] (Signed) J. D. KLUTTZ,
Notary Public.

My commission expires 4/22/22.

(Here follow tables marked pages 92-105, inclusive.)

Filed Jan. 24, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS et al.

C. J. O'Brien, being duly sworn, says that he has brought together the information shown in the attached affidavits, for the several Counties of North Carolina, set opposite the name of each affiant, and finds that said affidavits show:

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Alamance	B. M. Rogers	$517,606.00	$355,184.00	68.62
Alexander	J. P. Crouch	50,175.00	24,860.00	49.54
Alleghany	E. L. McMillan	97,167.56	70,088.00	72.13
Anson	Fred J. Coxe	111,603.42	67,721.00	60.68
Ashe	C. W. Higgins	225,374.89	122,591.00	54.39
Avery	Avery Goodman	63,480.50	52,975.00	83.45
Beaufort	Chas. M. Weeks	555,540.00	393,592.00	70.84
Bertie	P. T. Perry	304,883.80	153,828.00	50.46

Bladen	D. B. Johnson	131,930.00	123,267.00	93.40
Brunswick	L. J. Poisson	61,610.00	44,600.00	72.39
Buncombe	George H. Wright	3,261,452.00	2,255,839.00	69.16
Burke	George H. Battle	96,380.00	51,268.00	53.19

107

Cabarrus	John H. Oglesby	146,619.00	90,602.00	61.78
Caldwell	John M. Crisp	85,905.00	74,960.00	87.26
Camden	P. G. Sawyer and M. B. Simpson	107,200.00	47,024.00	43.85
Carteret	D. W. Morton	121,433.00	119,800.00	98.66
Caswell	E. F. Upchurch	92,506.00	56,660.00	61.25
Catawba	Klutz B. Clippard	369,116.00	211,231.00	57.22
Chatham	Jas. L. Griffin	99,445.00	58,594.00	58.90
Cherokee	W. M. West	128,522.00	84,042.00	65.39
Chowan	R. W. Boyce	106,545.00	97,300.00	91.32
Clay	Wayne L. Swanson	54,550.00	39,010.00	71.51
Cleveland	R. L. Weathers	428,109.35	301,044.00	70.30
Columbus	L. V. Grady	228,820.00	167,222.00	73.08
Craven	Wm. Dunn, Jr	379,831.66	310,610.00	81.77
Cumberland	E. L. Hall	414,122.03	270,615.00	65.35
Currituck	P. G. Sawyer and M. B. Simpson	108,781.86	72,210.32	66.37
Dare				
Davidson	W. H. Phillips	478,760.00	258,653.00	54.02
Davie	J. S. Daniel	35,438.00	28,308.00	79.88
Duplin	H. L. Stevens	87,165.00	62,250.00	71.41
Durham	M. G. Markham	492,250.00	336,532.00	68.40
Edgecombe	J. L. Bridgers	209,382.24	133,055.00	63.00

Affidavit of C. J. O'Brien—Continued.

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Forsyth	Phillip L. Kainer, R. G. Parker, C. A. Vogler	2,139,311.57	1,526,368.70	71.34
Franklin	Hugh W. Perry	75,458.29	43,472.00	57.60
Gaston	Cecil C. Cornwell	202,167.00	136,974.00	67.70
Gates	P. L. Hoffler	133,575.00	84,760.00	63.45
Graham	A. H. Eller	39,904.50	17,486.00	43.82
Granville	C. G. Powell	272,387.87	141,930.00	52.10
Greene	.....	.....	.....	.....
Guilford	John H. McAdoo	2,337,104.00	1,627,041.00	69.61
Halifax	R. C. Dunn	237,303.50	125,777.50	54.69
Harnett	J. C. Clifford	116,685.00	70,045.00	60.03
Haywood	T. Troy Wyche	221,720.83	129,342.00	58.33
Henderson	Mrs. J. E. Bishop	678,562.05	591,194.05	87.12
Hertford	J. E. Vann	100,226.00	67,268.00	67.12
Hoke	Oscar Leach	24,042.25	22,325.00	92.85
Hyde	Elmo Mann	84,712.50	60,905.00	71.90
Iredell	John L. Millholland	224,435.00	155,250.00	69.17
Jackson	Raymond R. Nicholson	190,967.00	44,125.00	23.10
Johnston	E. F. Ward	382,507.56	224,047.25	58.57
Jones	John R. Barker	204,486.00	117,763.00	57.58
Lee	D. E. McIver	90,027.00	74,457.00	82.70
Lenoir	C. W. Pridgen	212,579.06	191,465.00	90.06
Lincoln	John E. Hoover	217,764.00	111,146.00	52.40

Macon	J. F. Ray	32,275.00	19,775.00	61.26
Madison	J. Will Roberts	29,780.00	18,327.00	61.54
Martin	H. W. Stubbs	623,064.03	238,679.00	38.31
McDowell	H. R. Ledbetter	93,675.00	54,480.00	58.16
Mecklenburg	Geo. M. Phifer	3,169,115.25	1,815,279.50	57.28
Mitchell	J. D. Pannell	93,991.00	65,056.00	69.21
Montgomery	W. L. Wright	244,638.00	158,764.00	64.89
Moore	N. A. McKeithen	210,678.00	119,410.00	56.70
Nash	J. P. Bunn	361,740.43	165,891.00	45.85
New Hanover	Wm. L. Smith	989,207.00	866,550.00	87.60
Northampton	P. F. Calvert	54,848.00	48,620.00	88.64
Onslow	Frank Thompson	82,418.00	75,475.00	91.46
Orange	J. F. McAdams	162,269.00	120,706.00	74.38
Pamlico	G. V. Rawls	41,150.00	15,556.00	37.80
Pasquotank	P. G. Sawyer and M. B. Simpson	188,681.15	126,778.00	67.14
Pender	J. T. Bland	90,000.00	64,885.00	72.90
Perquimans	W. F. C. Edwards	95,002.00	87,775.00	92.39
Person	A. P. Clayton	59,124.00	45,570.00	77.07
Pitt	C. F. Manning — J. C. Gaskins	459,976.50	383,157.00	83.00
	W. C. Hague	40,743.20	28,929.00	71.00
Polk	John M. Brittian	235,365.00	135,150.00	57.42
Randolph	H. V. Guthrie	80,070.00	55,610.00	69.40
Richmond	Wade Wishart	119,272.00	68,004.00	57.00
Robeson	Nurna Winstead	815,821.00	524,584.00	64.30
Rockingham	Max L. Barker	179,097.90	130,391.75	65.52
Rowan	M. T. Wilkie	106,706.93	79,672.00	74.70
Rutherford	H. A. Grady	222,556.00	110,837.00	49.80
Sampson	T. J. Dunn	61,200.00	39,561.00	64.64
Scotland				

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Stanly	George P. Palmer	151,374.00	119,256.00	78.78
Stokes	N. Earl Wall	169,465.00	100,339.00	59.20
Surry	B. F. Folger	198,624.00	108,860.00	54.80
Swain	D. E. Nichols	55,435.00	40,374.00	72.83
Transylvania	Roland Owen	39,950.00	24,870.00	62.25
Tyrrell	A. Melson	48,603.33	34,232.00	70.41
Union	M. L. Flow	473,906.00	331,924.00	70.00
Vance	Robert G. Kittrell	500,066.00	307,311.00	61.50
Wake	H. E. Glenn	810,175.00	716,648.00	88.45
Warren	E. C. Price	131,427.33	69,200.00	52.60
Washington	Z. V. Norman	112,102.50	58,230.50	51.95
Watauga	T. E. Bingham	207,632.00	133,018.00	64.07
Wayne	D. E. Grantham	244,675.00	87,851.00	35.91
Wilkes	Frances Hendren	113,512.40	66,214.00	58.33
Wilson	R. L. Brinkley	304,964.00	191,107.00	63.44
Yadkin	John D. Reece	71,495.00	48,128.50	67.31
Yancey	C. C. Caraway	194,974.00	173,972.00	89.22
Total		$30,598,475.24	$20,373,684.00	66.58

C. J. O'BRIEN.

Subscribed and sworn to before me, this 24th day of January, 1922.
[SEAL.]

C. J. BLAYLOCK,
Clerk U. S. Court.

110 *Order for Filing Affidavit of Members of Former Tax Commission.*

Filed Apr. 6th, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS and Others.

In this cause it is agreed by counsel and so ordered by the Court that the affidavit of the members of the former Tax Commission of North Carolina, filed in the case of Southern Railway Company against A. D. Watts, and others shall be filed and considered as a part of the evidence in the case, that is to say, the Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Norfolk & Southern Railroad Company and Atlantic and Yadkin Railway Company.

(S.) H. G. CONNOR,
U. S. District Judge.

111 *Affidavit of Members of Former Tax Commission.*

Filed Jan. 24, 1922.

STATE OF NORTH CAROLINA,
Wake County:

W. T. Lee, George P. Pell and A. J. Maxwell make this statement under oath.

That in the years 1919 and 1920 W. T. Lee, George P. Pell and A. J. Maxwell were members of and constituted the State Tax Commission, W. T. Lee being Chairman of the State Tax Commission, and had and exercised the duties and responsibilities conferred upon them by Chapter 92 of the Public Laws of 1919 and by Chapter 84 of the Public Laws of 1919, and as the State Tax Commission exercised the powers and duties of a Board of Appraisers of all properties, located within the State of North Carolina, of all railroad companies, (excepting certain incidental properties of such companies assessed by local authorities) and also had and exercised supervision of the valuation of all real property of every kind and of the listing and valuation of all personal property of every kind in all counties of the State. In the supervision of the listing and valuation of such properties by local assessing officers, under the laws hereinbefore referred to, it was the purpose to have all lands listed and valued equally at the true value of such lands, and assessing officers were required to ascertain the actual sales value of lands, where there had been a

recent sale, and to use the information thus obtained, as well as all other information obtainable, in finding the actual true value of such lands on the first day of May, 1919, and in estimating the value of other similar lands, in cases where there had been no recent sales, and that as to industrial plans of all kinds and the tracks, structures, buildings and equipment of railroad companies—properties which had not been subject to unit sales as a whole and the value of which could not therefore be determined with relation to an actual sale of such properties—it was the purpose to require, and the State Tax Commission did in so far as it could reasonably do so, the owners of industrial plants and railroad companies, to furnish information on forms prepared by experienced persons employed by the State
112 Tax Commission, complete detailed information, under authority of section thirty-one of Chapter 84 of the Public Laws of 1919, of the cost of reproduction of such industrial plants on the price level of May 1, 1919, and as to railroads the cost of reproduction of the properties of such companies new (on May 1, 1919), including side tracks, doubld tracks, and all properties owned by such companies in this State, less reasonable depreciation for such of its properties as had depreciated in value, and also information as to capital stock, bonds and other indebtedness, earnings, and so on.

The Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk Southern Railroad Company, in response to demands made upon them for specific and detailed information as to the cost of reproduction of the properties in this State of each of these companies, did file with the State Tax Commission certain sets of figures, now on file with the Commissioner of Revenue, but did not pretend that such figures even approximated the cost of reproduction of the properties owned by these companies, or either of them, in this State, in the year 1919, but, on the other hand, insisted that it would not be possible for them to furnish this information at any reasonable cost or at any cost within a period of several years. The State Tax Commission, therefore, did not have the benefit of this specific detailed information with respect to the value of the particular properties in this State of these several railroad companies which it did have with respect to, and used in, the valuation of properties of industrial enterprises within the State, and of necessity had to form its valuation of the properties of these companies without having this information and by making the best use that it could of other information furnished by these companies and information on file with and in the records of the North Carolina Corporation Commission.

One of the evidences of value submitted for consideration, by each of these companies was what is technically known as "invest-
113 ment accounts" of these companies, not within the State of North Carolina, but throughout the entire systems of railroads owned by them in many states other than North Carolina; and it was insisted by them that the proportion of their total investment account which their main line mileage within the State of North Carolina bore to the total main line mileage of each of these several

railway systems throughout the several states in which they operated would give a fair value of the property of such companies within the State of North Carolina, except that it was insisted that they had larger and more expensive terminal facilities outside the State of North Carolina than they had at any one point within the State of North Carolina, and that for this reason the straight mileage proportion of their investment account would be more than a fair proportion for this State.

The State Tax Commission was not able to agree with them that this method would fairly determine the value of their properties within the State of North Carolina, for that, first, their investment accounts represented investments made in the properties going back through a long period of years to their original organizations, and such investments having been in a large part made in years when the general price level of materials, commodities and labor was very much lower as during the year 1914 than the price level for materials, commodities and labor was on May first 1919 and 1920; and for that, second, a straight mileage proportion of their lines did not, in our opinion, accurately or fairly represent the actual value of the properties of either the Southern Railway Company, the Atlantic Coast Line Railroad Company or the Seaboard Air Line Railway Company within the State of North Carolina, the lines of these companies within North Carolina having a much greater value than an average based upon the mileage for their entire systems, in that they have a larger proportion of double track main line mileage in North Carolina than for their entire systems, and in that both the gross and net earnings of each of these railway lines within the State of North Carolina is much greater than the average gross and net
114 earnings per mile for their entire system. All of this was duly considered by the Commission in proportioning, dividing, and determining the valuation of the property of the said railroads in North Carolina as provided by law.

For the year 1918, the last calendar year prior to the first day of May 1919, the excess net earnings per mile within the State of North Carolina of each of these railway companies in excess of the net earnings per mile for their entire systems, stated in percentages as shown by their reports on file with the Corporation Commission, was as follows:

Southern Railway Company	50.48
Atlantic Coast Line Railroad Company	19.75
Seaboard Air Line Railway Company	250.01

A satisfactory estimate of value could not be made based upon the market value of the stocks and bonds of these companies on the first day of May 1919, for the reason that the limited market and limited number of shares and bonds sold on the market did not furnish, in our judgment, a fair index of the actual *b*alue of these properties as a whole, and more particularly did not furnish an index of the actual *b*alue of the properties of these companies located within the

State of North Carolina for the reasons hereinbefore stated; nor was it considered that the actual *b*alue of these properties could be fairly determined by their earnings, until there should be a fair return to normal conditions of operating costs flow of traffic and stabilization of transportation rates.

For the reasons hereinabove set out the valuation finally made or determined by the State Tax Commission of the properties of each of these railway companies within the State of North Carolina as of the first day of May 1919 was not made with the sole and exclusive relation to any one element or indicia of value, but after due and proper consideration of all of them and upon the best knowledge and information obtainable by the Commission.

115 The members of the Commission have for years been actively engaged in the matters of valuation for rate making and taxation purposes in North Carolina and are acquainted with property values of railroads in the State and in assessing the properties of the plaintiffs the Commission gave due consideration to all factors and methods prescribed by the law governing such valuations and the values of said properties as fixed and determined by the Commission are, in the opinion of affiants, fair, just and reasonable within their personal knowledge and to their personal information as to property values and particularly railroad property values in North Carolina.

As to the properties of the Southern Railway Company in the State of North Carolina, a valuation of $111,308,325 was made, which was in fact the proportion of the investment account of the Southern Railway Company which the gross earnings of that company within the State of North Carolina bore to the total gross earnings of the Southern Railway Company for the year. Upon hearing and review of this valuation, after notice to the Southern Railway Company, it was reduced to $101,960,416, which was in fact the amount which the average net earnings of the Southern Railway Company within the State of North Carolina for the preceding five years, capitalized upon a basis or theory of six per cent, would have produced.

In general the same method was followed in fixing the valuation of the total properties in the State of the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railroad Company, and the Norfolk and Southern Railroad Company. In each case the basic consideration was the cost of reproduction value, less depreciation, which, in the absence of correct reports of such values by the railroads as they were required by law to furnish and which were duly called for by the Commission, was arrived at as accurately as posible by a consideration of the investment account. In

116 each case a tentative cost of reproduction value was found in this way which, except in the case of the Norfolk and Southern, was in excess of the assessment as finally arrived at. In the case of the Norfolk and Southern this investment account, or cost of reproduction, value was the same as the final assessment and that railroad made no application to the Commission for re-hearing on that assessment and took no exception thereto. In the case

the other railroads, a consideration of capitalization of net income and of the other factors which the Tax Commission was authorized by to consider led to the reduction of this investment account, or cost of reproduction, value to the valuation fixed as the final assessment.

After the assessment of the properties of the plaintiffs had been arrived at by the Tax Commission pursuant to the Revaluation Act (Public Laws of 1919, Chapter 84) the Commission, as required by law, made report of its action and valuation to the General Assembly of North Carolina and thereupon, in the special session of 1920 the General Assembly, by Chapter 1, Public Laws, Extra Session 1920, specially approved said valuations as correct and adopted them as and declared them to be the basis for taxation for the years 1920-1923 inclusive, except as such valuations should be thereafter changed according to law. And the affiants are informed and believe and so aver that the said valuations, so made by the Commission and reported to the General Assembly and approved and adopted by it, have remained and still are the basis for taxation of the said railroads in North Carolina except in so far as they have been modified or changed by the Commissioner of Revenue upon application made to him by the said railroads for review as provided by law.

As to the tentative values of the engineers of the Interstate Commerce Commission, referred to by thee plaintiffs in these suits as being proper indices of the correct valuation of their total properties in North Carolina, the said tentative values were arrived at upon the basis of an inventory of the railroads' properties as of the
117 date of June 30, 1914. The affiants state of their own knowledge that the said prices prevailing in 1914 as to material, labor, and all costs of railroad construction, were abnormally low, that since that time such prices have greatly increased, and that in 1919 and in 1920 the said prices of labor, materials, and all things going into the construction of railroads were twice, if not much more than twice, as high as those of 1914 upon which the said tentative figures of the Interstate Commerce Commission were based. In the opinion of the affiants the said tentative figures in no way furnish a proper index or test of the value of the properties of railroads in North Carolina in 1919 and 1920.

It was the purpose of the State Tax Commission in valuing the property of transportation companies and other companies exercising the right of eminent domain, and in the supervision of the valuation of all other property by local assessing officers, to carry out and to have carried out what the State Tax Commission understood to be the general purpose of chapter 84 of the Public Laws of 1919, that all property of every class should be fairly and equally valued at its actual market value, and in evidence that no injustice was done to the Southern Railway Company, the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railroad Company there is attached hereto a copy of the report of the State Tax Commission to the Special Session of the General Assembly of 1920, showing by comparison, the valuation of 1920 compared with the former valuation of each of the several different classes of properties within the

State of North Carolina and showing that the increase in valuation of all railroad property within the State of North Carolina was 99 per cent; of real property 296 per cent; and of all property of all classes within the State 194 per cent.

W. T. LEE.
GEORGE P. PELL.
A. J. MAXWELL.

Sworn to and subscribed before me this January 21, 1922.
W. H. PITTMAN,
Notary Public.

Commission expires July 29th, 1922.

118 *Report of State Tax Commission on Revaluation.*

Filed Jan. 24, 1922.

It is agreed that the following report shall constitute part of the transcript of record in the case of Seaboard Air Line Railway Company vs. A. D. Watts et al.

JAMES S. MANNING,
Attorney General.

Report of State Tax Commission on Revaluation.

His Excellency T. W. Bickett, Governor of North Carolina, Raleigh.

SIR:

In our recommendations to the regular session of the General Assembly in 1919, with respect to the regular quadrennial revaluation of property then impending, the only recommendation presented with the confidence of positive conviction was that the General Assembly should provide an absolute standard of value to be applied alike to all classes of property in all counties; that it should not be further left to the conjecture of each taxpayer, and each assessing officer in each county to determine with varying opinion the standard of value by which they would be taxed. After most thorough consideration the opinion became general that there should be no further temporizing with this troublesome question, and the act which became Chapter 84 of the Public Laws of 1919, known as the Revaluation Act, and establishing a 100 per cent basis of value, was enacted by the unanimous vote of the General Assembly. The general supervision and enforcement of this law was entrusted to the State Tax Commission. We have the honor to report the successful completion of this work, and present herewith the tabulated results with the hope and confidence that after it has been subjected to careful analysis it may meet approval with the same unanimity with which the work was instructed to be done.

Before attempting any analysis of the work we must be permitted to set down in this record our deep appreciation:

First, of the coöperation received from the average citizen and taxpayer of North Carolina; the best average citizen of the world. If the work has been well done, it is because the average citizen and taxpayer of the State refused to be stampeded by appeals to his fears and selfish interests and gave his full coöperation to the extent that he furnished a full disclosure of his property and a fair estimate of its fair market value.

Second, to a group of assessing officers in the counties and districts, who in many cases accepted the responsibility as a call to perform a difficult and disagreeable but patriotic public service, and whose loyalty to the cause has at all times sustained our confidence in the complete success of this great undertaking.

The constitution of the State for fifty years has said that all property should be taxed by uniform rule according to its true value in money. Every tax law that has been enacted under that constitution has exacted a pledge of obedience to that principle. Every assessing officer has been required to swear that he would observe it, and every taxpayer that he had made his return in compliance with it. The only novel feature of the Revaluation Act was its greater determination to provide that equality in distribution of the tax burden which is the right of every citizen under the guarantee of that constitutional principle. Its only experiment was that it, too, might fail in its execution.

The exhibits attached to this report demonstrate the successful execution of the great task assigned to the assessing officers in the one hundred counties of the State. The superior excellence and thoroughness of the work appears not merely in the aggregate value of all property in the State of $3,129,423,234 compared with the former amount of $1,099,120,389, but in every test of thoroughness that may be applied.

The first interest of the taxpayer is that all property shall be listed. To the extent that property is listed or omitted the
119 tax portion of the citizens who makes a full and fair disclosure is increased or decreased. In testing the revaluation with former listing of property on the basis of quantity of property listed, rather than the value of property listed, we are dealing with known factors, leaving no room for the wide margin of difference that may obtain in dealing with matters depending upon varying opinion for the conclusions to be reached. Upon every quantity test that may be applied the thoroughness of the revaluation work is established.

A Million Acres of Discovered Lands.

Quite the most surprising item in the list is the discovery of 1,032,290 acres of land which was contributing no part to the public expense. This, in itself, is sufficient condemnation of the former indifferent methods of listing property, and points to the necessity of finding some means by which a piece of real property, once on the tax lists, can never get off. A recommendation to this end will be submitted for consideration.

Some of the most striking items of quantity increase are as follows:

Increase in personal property listed	$397,489,018
Increase in solvent credits listed	124,490,338
Increase in number polls listed	20,754
Increase in taxable incomes listed	20,931,017

(The increase in revenue to the State in the last item of increased incomes listed will be approximately $260,000, or more than double the cost to the State of the revaluation work.)

We present herewith comparative statement of total value of each of the several classes of property for the years 1919 and 1920:

	1920.	1919.	Increase.
Real property	$2,006,124,997	$506,808,394	$1,474,755,100
Personal property	807,866,443	426,062,907	377,208,201
Cotton mills	205,581,304	58,266,591	147,314,713
Woodworking and furniture factories	24,728,628	8,053,188	16,675,440
Knitting mills	19,972,015	7,102,454	12,869,561
Cotton oil and fertilizer plants	5,961,462	2,357,209	3,604,253
Grain mills	1,745,105	711,187	933,918
Vehicle manufacturers	1,240,670	472,666	868,004
Banks	35,247,693	21,255,863	13,991,830
Tobacco companies (property)	93,787,174	39,543,007	54,244,167
Miscellaneous	9,302,788	3,303,095	5,999,693
Corporation excess	20,832,385	20,000,000	832,385
Power companies	56,484,094	8,331,112	48,152,982
Railroads	250,587,158	125,417,618	125,169,540

In comparing the increase in personal property, as related to increase in real property, with the 1919 values on each, the explanation should be made that real property tax values have stood still since 1915, except for new structures, while the increase in quantity and value of personal property was listed up each year. The real values now fixed stand for four years, and based upon past experience we will expect the personal property to continue its increase during each of the four years.

The same explanation applies to assessment of all corporations except railroads. They all assessed annually, and the increase in value each year is assessed.

The New Tax Rates.

The part of this report which is presented with the greatest pride is that exhibit which indicates the tax rates which will be levied this year by the State and the several counties of the State. This

exhibit will furnish the final proof of the good faith of revaluation and answer the fears of its critics. This exhibit must of necessity attract attention beyond the borders of our State, for nothing that is fairly comparable to it in favorable tax rates can be found in any other state. Many other states have indeed gone through the same process of valuing all property at 100 per cent of actual value,
120 but few of them have been so successful in supplementing their property tax with revenue from other sources, and none of them so frugal in the appropriation and expenditure of public funds.

The tax rates levied by the State cannot exceed, under the ten per cent limitation, six cents for the combined rate for the State and pension tax, and thirteen cents for the State public school tax.

Scotland County will have the lowest rate of any county at twenty-eight cents, for all State and county purposes combined, and Clay the highest at $1.30.

Valuations Have Been Made by Local Boards.

With the exception of the valuation of railroads and public utilities, and the assistance given in the appraisal of industries, the valuations have all been made by local boards, a majority of whom were appointed by the local boards of county commissioners. District supervisors representing the Commission have worked with them constantly with the view of keeping the work at all times and in all counties on the same uniform level of values. Every valuation is a matter of judgment and can never be done with exact accuracy and equality, and of course we would make no such claim, but after having been in close touch with this work during the whole of its progress, we believe that upon the whole it is as nearly equal as we could hope to attain, and we sincerely feel that the great bulk of glaring inequalities have been removed. It is the work mainly of the property owners themselves, passed upon by their local boards, and the authority imposed in us by the State has at no time been used except where it was helpful to the local boards, or where it was absolutely essential to preserve equality.

Local Boards to Adjust Complaints.

The State Tax Commission does not wish to be entrusted with any authority not deemed essential to an efficient administration of a just and uniform tax system, and with the completion of revaluation, and to remove any possible cause of complaint, we recommend the following changes as to the relisting of real and the listing of personal property:

That between January first and June first in each year the Boards of County Commissioners of the several counties, or some other local board, be vested with authority to hear complaint of the value of any particular tract of real property upon complaint and affidavit of the owner that it stands valued in excess of the actual or market value of the property, and that if they find the property in question is

valued in excess of its actual or market value, to reduce it to what they find to be its actual or market value. Also upon complaint of inequality, that they be given authority at such times to increase the value of any real property they find to be undervalued to bring it up to the legal standard of value, and that any changes in value so made be reported to the State Tax Commission, that if found to be proper they may be investigated as upon appeal.

Future Listing Personal Property.

That for the future listing of personal property the office of County Supervisor be continued, to be appointed by the Board of County Commissioners, with authority in the County Supervisor to appoint necessary assistance, and list all personal property as under present terms of Revaluation Act.

We should hope that generally the County Supervisors now in office be reappointed, where their work has been efficient and satisfactory, and their services may be available, but this may with propriety be left with the County Boards of Commissioners. We know of no line of public service in which the merit system, based upon qualification and experience, is more desirable, and by all means we shall hope that the step from the township to the county unit of listing property be maintained.

121 "Inflated Values."

There has been some criticism that "inflated" values have been adopted as the basis of tax values. It is undoubtedly true that we have moved on to a new price level of all commodities since 1915 when real property was last valued. Nevertheless we believe that a careful analysis of the values reported will disclose that there has been a conservative compliance with the provision of the Revaluation Act that such values should be used as were "deemed to be stable." On May first of last year there was some apprehension of a post-war slump in the price of farm products, the largest controlling factor in the general price level. On the contrary, when the markets opened in the summer and fall of 1919, the prices of farm products sought new high levels, and there was a general and decided advance in real estate values. So that values as of May 1, 1919, became relatively conservative values, and we know by numerous tests that generally valuations have been conservatively made as of that date.

The increase in real estate values is large, but when subjected to any reasonable test they are shown to be conservative. In this connection it is interesting to note the increase in the total value of farm products produced in this State since 1915, when real estate was last valued:

Total value farm products, 1915	$197,185,000
Total value farm products, 1919	683,168,000

This increase in total value of farm products is in larger proportion than the total increase in assessed value of real and personal property, while taxes will be paid on these values at a greatly reduced rate of tax as compared with 1915.

Valuation of Industries.

For the first time in the history of the State there has been undertaken an accurate and uniform valuation of all the industries of the State. Large enterprises that run into millions of value are beyond the reach of the local appraiser accurately to appraise, and equal valuations as between competing industrial plants is of even greater importance than equalization as between different classes of property not competitive with each other. Under authority of the Revaluation Act the Commission employed valuation engineers to assist in this work, which has been carried on under the supervision of our revaluation clerk. Time did not permit the handling of so large an enterprise in as thorough a manner as we would have liked to have had it done, but considering this limitation the results have been very satisfactory. We are assured that such values have been made as will place upon these industries a fair share of the public burden, and certainly it will be more equally distributed between them than under the former methods of valuation. The work in this line was in the nature of assistance to the local boards by whom the final valuations were made.

Relation of Average Assessment to Par Value.

The valuations made in the manner above indicated have resulted in assessments in some cases surprisingly high as compared with the par value of the capital stock of the companies, some running as high as sixteen hundred dollars per share of one hundred dollars. The general average for the State as a whole for all cotton mills was $242 per share of $100, and of all other corporations $164 per share of $100.

Banks.

The capital stock of banks has been assessed at the full amount of capital, surplus and undivided profits, less deduction of non-taxable securities provided by statute. To this figure has been added the appreciation of bank location, buildings, as shown by revaluation of same, and the value above that carried on their books added to their surplus account for taxation purposes. This is as high as these valuations can be made.

122 Valuation of Railroads.

One frequent criticism has been that the valuation of railroad properties could not be increased, it being understood that they were assessed at full value before. Our report shows that railroad prop-

erties have been increased from $125,417,618 to $250,587,158, or more than doubled. Under the new Interstate Commerce Act the Interstate Commerce Commission is required to make rates that will yield an average return of not less than five and one-half per cent upon the railroad lines as a whole, and to find the fair value of these properties as the basis for making the new rates. That Commission has not yet determined the basis on which the value of the ralroad lines will be finally fixed. It will take several years to complete the physical valuation of all of these properties. Pending this final valuation the railroad lines have submitted to the Interstate Commerce Commission what is known as their investment accounts and have asked that this basis of value be used for determining the scales of rates and amount of return they are entitled to earn on their properties. It seems clear to us that the time has come when the value upon which a railroad or public utility is permitted to earn a return is the value upon which it should pay taxes in this State. In either case the purpose is to find the fair value of the property. So that generally our valuation of the railroad lines in this State is based upon a mileage proportion of their investment account. which they have asked the Interstate Commerce Commission to adopt as the basis for making their rates, and to this mileage proportion we have added the value which we find to represent the intangible value of their North Carolina lines, based upon the volume of business in this State greater than the average volume of traffic on their lines as a whole.

The experiences of recent years have been conclusive that any amount of tax levied against railroad companies is a tax upon the whole public served by them. If it were legal to do so, and we were to collect all public revenue from railroad companies, it would simply mean that we would pay our taxes through railroad depots and ticket offices instead of the public officers who now collect them. The new assessment of railroads does not represent as great an increase as the average increase of other property, for the reason that they were assessed relatively higher than any other property before, but we anticipate that it will meet the fair demands of public opinion when it is known that they are assessed like other property at their full value, and upon a valuation quite as high as that upon which they are asking to be permitted to earn a return.

Once On, Never Off.

The startling increase in quantity of land listed shows the necessity for adoption of some system by which a piece of real property, once on the books, can never get off. We have no assurance that it is all on now. The rapid subdivision of lands and town lots makes it more and more difficult to keep track of it all. We ought never to have to go to as much expense again to get an inventory of all these separate tracts and lots of realty. The most practical suggestion that has come to us for keeping track of it is to provide that before a transfer of real property can be put on record in the register of deeds office the grantee or his agent give a certificate to the reg-

ister of deeds, on form provided by State Tax Commission, which shall contain accurate description and all information that would be helpful to the listing officer in transferring such property to the rightful owner at the next listing period. A reasonable fee might be charged for this service, either for the benefit of the register of deeds or the county fee fund. A proper file of information of this character turned over to the listing officer would facilitate future listing and practically guarantee a full listing.

123 January First Listing.

The most important change made by the Revaluation Act, from the standpoint of efficient administration of the tax laws, was the change in listing date for all property and incomes from May first to January first, and no other feature of it has been so much misunderstood in purpose and effect.

Why the Change Was Made.

The important reasons why this change was by unanimous consent made at the regular session were:

First, that there has been a very decided tendency within the last few years for all accounting systems to be adjusted to the calendar year, rather than a fiscal year, and the records not only of corporations and businesses of all kinds to be kept and inventoried and balanced with reference to January first, but the affairs of all individuals who have sufficient income to be required to make report to the Federal Government in like manner strike balances on January first. As to all such persons, firms and corporations, it is a great inconvenience to be required to give accounting with reference to any other day in the calendar, and results in the use of approximations, rather than exact inventoried facts, being used as the basis for their return for State and county taxes. Such approximations are almost invariably made in favor of the taxpayer rather than the State. Nothing so demoralizes a tax return as the privilege of making a guess. A sworn return, taken from the books, and based upon exact inventory, is the best return the State can get.

This reason is strongly persuasive, but the still stronger reason is the fact that, with our General Assembly convening in January and completing its revision of revenue laws on the day of adjournment in March, there can never be a complete listing of all property within the time limit after such adjournment and the time when the tax books must be made up. Not even a beginning can be made until after such adjournment, and then in the brief space of time before July first the laws must be printed and interpreted, the organization for the work must be made and instructed in all changes, blank forms prepared and printed in millions and distributed, and the work of listing hurriedly, inadequately and inefficiently done. Under these conditions inefficiency will forever be the penalty for a May first listing date.

Modifications to Prevent Injustice.

When this important change was made by the General Assembly it was not unmindful of its possible effects upon the largest class of people in the State, those engaged in agricultural pursuits, and such modifications were made as were intended to prevent not only any injustice, but any injurious effect, upon this class. These modifications were:

First, exemption of full amount of three hundred dollars in value, permitted by the Constitution, of provisions and other like personal property on hand January first.

Second, permission to treat all farm products, in the hands of original producers, on January first, as solvent credits, and to deduct from the value of all such products any indebtedness owing by the producer for any purpose.

These modifications provided fully in theory against any increase in tax burden upon the farmer by reason of the change in listing date.

A Demonstration, Not An Argument.

But with the completion of the first listing under the January date, and the tabulated results in hand, it is possible to remove the subject from the speculative field and present exact facts. A tabulation of the personal property listed in all the strictly rural townships in the State shows an increase of personal property listed of 33.7 per cent. A like tabulation of personal property listed in townships having cities and towns in them shows an increase in personal property listed of 105.9 per cent. In some rural townships the
124 total value of personal property listed was actually reduced as compared with 1919 by the $300 exemption. A fair estimate is that this exemption amounted to a hundred million dollars in the State.

Property Shifted Across the State Line.

An important item in the personal property listed on the January first date is property that formerly remained in the State till after January first, the listing date across the State line in Virginia, and then shifted over in Virginia, before the May first listing date in this State. We have not complete information on this line, but have specific returns showing increase of $51,807,549 in tobacco listed on last January first greater than was listed the previous May first. A large part of this would have been in Virginia before May first. It is the custom in eastern North Carolina tobacco cities to remove their stored tobacco between these dates.

In like manner there was a considerable shifting in ownership of non-taxable government bonds between owners in these states, making them serve exemption for owners in each state in the same year.

The January first date has demonstrated its efficiency, and has demonstrated its lack of injustice. It has demonstrated that the

farmer is the beneficiary of this change. More than any other citizen he is interested that full time be given and adequate means be employed to find and list the intangible personalties that seek the cities and towns for a residence. His property is mostly tangible and visible.

Some of them have been persuaded upon misunderstanding that this change was made to do them an injustice.

Shall we surrender this change so vital to the efficient tax system? Shall we be willing to do the farmer a distinct injustice merely to satisfy what we now know to be a misinformed sentiment? Should we not rather invite his confidence by consideration for his real interest, and follow the straight course that leads to efficiency in the administration of just tax laws? No class of citizenship in North Carolina is fairer in judgment, and will be less responsive to an appeal that merits their confidence than those who till our soil.

We have ventured to argue this point at length because our experience in tax administration has brought us to know its importance. It takes time to do justice in as great a matter as the listing of all the property of the State. If after having once made this important change it be abandoned as a mistake, even though upon theories demonstrated to be untrue, it will, in our judgment, be the end of any hope of an efficient tax system.

With great respect we have submitted these views, and most earnestly recommend them to the consideration of the General Assembly.

Combine State and Pension Tax.

We recommend that the tax levied by the State for its own revenue, and for its pension fund, be combined in one figure, as State and Pension Tax. For a number of years there has been no separation of these funds, for the reason that there is appropriated a straight sum for the payment of pensions, and this is substantially in excess of the sum collected in the name of a pension tax. Both taxes combined this year cannot exceed six cents, under the ten per cent limitation, and the levy in separate items necessitates a separate calculation of tax, and a separate item on the tax books, and on the tax receipt of each taxpayer, and separate entries and calculations in all reports to the State Auditor, State Treasurer and State Tax Commission for a fund that merges into the general fund as soon as it reaches the State Treasury.

Poll Tax Exclusively for Schools.

We also recommend that the poll tax, which will be greatly reduced by the reduced general tax levy, be directed entirely to the public school fund and support of the poor. For some reason, not clearly authorized by the Constitution, a part of the poll tax, corresponding to the small property tax levy for pensions, has been calculated into the theoretical pension fund. The language
125 of the Constitution is plain that the poll tax shall be devoted to the public schools, and the poor. The small proportion

of it related to the reduced pension levy this year would in any event be almost too small to count, and as a matter of fact doesn't affect the pension fund anyway, even to that small undetermined amount, and it would seem to be appropriate to direct the whole of the poll tax as the Constitution directs.

The Ten Per Cent Limitation.

There was no more wholesome provision of the Revaluation Act than that placing a limitation upon all tax levies to be made in the State this year. Without it the revaluation could not have been successfully done. It is true that there have been some increases in governmental costs that could not have been foreseen at that time. But it seems to us none the less a pledge involving the good faith of the State. Every assessing officer in every county has relied upon this pledge and passed it on to every property owner. To break away from this pledge would dishonor the work and the workers. We take it as a matter of course it will not be done and that every tax rate in the State will be levied within the boundaries of this plighted limitation.

Not only should this pledge be kept inviolate, but it should become a matter of special care to provide ample protection against improper increase in the low rates established in future, except as such increase may be authorized by vote of the people. A fair margin of discretion must of course be left, but it is easy to find plausible purposes for levying taxes and spending public funds. The purpose of revaluation was to provide the means for raising public funds more equitably—not more easily. The maintenance of 100 per cent basis of valuations is dependent upon the continued maintenance of low rates of tax. The general property tax can be successfully maintained upon no other basis than low tax rates for the compelling reason that it bears equally upon all property whether the property at the time is yielding a return or not. Just as "the hard places are the quicksands of the law" the inherent inequalities of the general property tax will break down its morale and sooner or later defeat any effort to maintain full and equal values of property if burdened with heavy rates of tax. Whatever the legitimate necessities of the State, counties and municipalities may be in future, some scheme of revenue must be found other than that of going back to rates of tax that will not permit full, fair and equal values on property to be maintained. Our increases of revenue must come from earnings and not from deficits.

Conclusion.

We feel that we should ask for consideration of the difficulties under which this report is made, in the short time permitted for compilation and analysis after complete reports were received from one hundred counties. Perfection of analysis and guarantee of complete accuracy could not be expected. We shall hope to present it more acceptably in our annual report.

COMPARATIVE STATEMENT OF 1919 TAX RATES AND APPROXIMATE TAX RATES FOR 1920, FOR ALL STATE AND COUNTY PURPOSES COMBINED, IN EACH OF THE SEVERAL COUNTIES OF THE STATE, BASED UPON 1919 REVENUES, PLUS TEN PER CENT.

Counties	Taxable Property, 1919	General Levy—State, Pension, School and County	Revenue	Revenue with Ten Per Cent Increase	Taxable Property Revaluation	...ty to Provide the Revenue With Ten Per Cent Increase
Sampson	11,197,514	1.47 2-3	165,349.95	181,884.95	34,694,412	.46
Scotland	7,734,478	1.05	81,212.02	89,333.22	31,535,992	.22
Stanly	10,001,092	1.30	130,014.20	143,015.62	39,731,421	.29
Stokes	6,710,529	1.32 2-3	89,026.35	97,928.98	16,437,947	.53
Surry	13,158,055	1.66 2-3	219,300.91	241,231.00	30,097,416	.74
Swain	6,339,953	.91	57,693.57	63,463.92	13,244,308	.41
Transylvania	3,848,590	1.92 2-3	74,149.50	81,564.45	8,540,623	.88
Tyrrell	1,861,416	1.14 2-3	21,344.24	23,478.66	4,513,819	.46
Union	13,154,821	1.33 2-3	175,836.10	193,419.71	34,403,408	.50
Vance	12,323,641	1.30 1-3	160,618.12	176,679.93	30,037,293	.52
Wake	36,413,611	1.43 2-3	523,142.19	575,456.40	87,122,735	.60
Warren	8,545,834	1.11 2-3	95,428.47	104,971.31	19,826,793	.47
Washington	4,761,226	1.09 2-3	52,214.78	57,436.25	11,918,212	.42
Watauga	5,784,888	1.45	54,880.88	60,368.96	11,542,401	.46
Wayne	20,892,956	1.37	286,233.50	314,856.85	70,318,520	.39
Wilkes	7,831,737	1.94	151,985.70	167,129.27	18,673,026	.83
Wilson	17,400,663	1.61 2-3	281,310.71	309,441.78	63,950,010	.42
Yadkin	4,173,145	1.82 2-3	76,320.78	83,952.85	12,503,324	.61
Yancey	2,836,925	1.71 2-3	48,700.55	53,570.60	10,821,649	.43
	$ 1,099,120,389	$1.45	$ 16,036,265.53	$ 17,639,892.89	$ 3,158,460,072	49.8

NOTE.—This table does not purport to carry the actual tax rates to be levied in the several counties of the State, but is the maximum rates that may be levied upon the total property values in hand at the time calculations were made, and upon the presumption that the full ten-per-cent increase authorized will be levied by the counties. This amended table does not include any *State tax* except the thirteen cents levied by the State for the benefit of public schools.

With some feeling of relief that the arduous task is complete, with high pleasure that we have been permitted to serve in this just cause, with our grateful acknowledgment for the invaluable leadership and never-failing assistance and encouragement and advice which we have at all times received from Your Excellency, we have the honor to be,

Very respectfully,

W. T. LEE,
Chairman;
GEORGE P. PELL,
A. J. MAXWELL,
Commissioners.

J. S. GRIFFIN,
Revaluation Clerk.

Raleigh, N. C., August 10, 1920.

(Here follows table marked page 126.)

Comparative Statement of Taxable Values for the Years 1919 *and* 1920, *Showing Number of Acres of Land, Value of Timber, Manufacturing, Mineral, and Quarry Properties, Average Value per Acre, Value of Town Lots, Value of Real Estate, Value of Personal Property, and the Aggregate Value of Real and Personal Property Listed with County Supervisors.*

(NOTE.—This statement does not include railroad and public service corporations, banks, and corporate excess assessed by the State Tax Commission.)

127

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Alamance, 1919.....	257,742	$2,786,845	$10.81	$2,058,055	$6,844,638	$5,532,968	$11,377,606
Alamance, 1920.....	262,836	9,966,036	37.92	7,159,464	24,934,832	10,537,710	35,472,542
Alexander, 1919.....	157,970	1,283,419	8.12	194,050	1,667,975	1,615,101	3,283,076
Alexander, 1920.....	165,761	4,864,885	29.30	681,423	6,527,000	1,956,886	8,483,886
Alleghany, 1919.....	143,309	957,833	6.68	28,343	996,054	940,622	1,936,676
Alleghany, 1920.....	147,001	5,383,189	36.62	83,210	5,383,189	1,465,520	6,848,709
Anson, 1919.....	328,634	2,663,408	8.11	964,020	4,379,115	3,781,961	8,161,076
Anson, 1920.....	329,715	10,529,114	31.93	2,855,697	13,384,811	6,831,284	20,216,095
Ashe, 1919.....	268,508	2,094,573	7.80	73,833	2,172,551	2,555,766	4,728,317
Ashe, 1920.....	272,678	12,360,480	45.33	322,432	12,731,463	3,917,513	16,648,976
Avery, 1919.....	113,053	1,059,508	9.37	128,961	1,571,789	672,046	2,243,835
Avery, 1920.....	130,932	3,863,827	29.51	308,197	4,793,754	1,133,928	5,927,682
Beaufort, 1919.....	379,913	3,422,611	9.00	2,534,192	6,365,173	4,231,976	10,597,149
Beaufort, 1920.....	396,759	24,325,213	61.31	4,238,253	29,207,006	8,462,799	37,669,805
Bertie, 1919.....	450,883	3,040,339	6.74	862,130	4,055,859	3,467,887	7,523,746
Bertie, 1920.....	400,557	9,629,044	24.00	2,259,976	13,958,782	5,301,677	19,260,459
Bladen, 1919.....	502,723	2,655,945	5.28	287,732	3,545,259	2,250,967	5,796,226
Bladen, 1920.....	524,585	10,092,335	19.24	794,790	11,630,040	3,418,325	15,048,365
Brunswick, 1919.....	476,230	2,406,552	5.05	490,048	2,896,600	1,640,498	4,537,098
Brunswick, 1920.....	502,593	5,477,845	10.90	970,035	7,953,027	2,017,305	9,970,332
Buncombe, 1919.....	312,643	6,664,587	21.32	13,484,771	21,862,308	9,232,489	31,094,797

Buncombe, 1920	.....	.....	....	.....	60,319,591	17,442,518	77,762,109
Burke, 1919	297,084	2,445,419	8.23	883,211	3,651,492	2,318,258	5,969,750
Burke, 1920	316,304	7,164,477	22.65	1,932,615	11,047,772	4,793,304	15,841,076
Cabarrus, 1919	208,079	2,213,175	10.64	1,734,076	6,729,195	5,406,793	12,135,988
Cabarrus, 1920	222,036	9,964,995	44.88	6,185,440	30,211,743	15,069,837	45,281,580
Caldwell, 1919	227,055	1,809,693	7.97	669,221	3,502,721	2,142,059	5,644,780
Caldwell, 1920	258,296	7,792,632	30.17	2,896,422	13,257,242	4,458,020	17,715,262
Camden, 1919	145,857	1,083,289	7.42	58,607	1,288,061	672,329	1,960,390
Camden, 1920	149,262	3,587,989	24.04	121,547	3,736,356	846,591	4,582,947
Carteret, 1919	239,554	1,703,631	7.11	1,056,084	2,993,060	1,586,379	4,579,439
Carteret, 1920	233,162	7,972,149	34.19	1,650,790	10,405,339	2,940,095	13,345,434
Caswell, 1919	262,748	1,686,517	6.42	116,680	1,803,197	2,188,466	3,991,663
Caswell, 1920	268,746	8,743,808	32.54	309,340	9,053,148	2,920,697	11,973,845
Catawba, 1919	256,932	2,460,000	9.58	1,604,830	4,692,916	5,370,515	10,063,431
Catawba, 1920	254,423	12,339,008	48.50	7,735,670	26,677,188	9,357,453	36,034,641
Chatham, 1919	404,913	3,063,242	7.04	504,565	4,082,437	3,551,644	7,644,081
Chatham, 1920	435,773	10,063,328	23.09	1,243,459	11,813,037	4,594,017	16,407,054
Cherokee, 1919	273,738	2,115,327	7.42	717,719	2,833,046	1,690,555	4,523,601
Cherokee, 1920	303,762	3,045,638	10.03	871,876	4,264,124	2,331,748	6,595,872
Chowan, 1919	99,967	1,159,788	11.60	582,677	2,007,621	1,778,608	3,786,229
Chowan, 1920	110,499	4,410,953	39.92	2,412,177	6,823,130	3,594,041	10,417,171
Clay, 1919	126,778	743,216	5.86	22,361	808,427	425,462	1,233,889
Clay, 1920	170,813	2,106,635	12.33	47,580	2,154,215	693,421	2,847,636
Cleveland, 1919	278,395	3,827,884	13.75	1,520,971	7,574,843	4,909,563	12,484,406
Cleveland, 1920	277,843	16,422,057	59.11	4,554,698	28,158,726	11,168,356	39,327,082
Columbus, 1919	458,631	3,429,666	7.48	822,207	4,922,220	4,061,355	8,983,575
Columbus, 1920	.....	.....	....	.....	15,789,229	6,600,000	22,389,229
Craven, 1919	364,212	2,421,364	6.65	4,354,543	7,617,226	4,097,447	11,714,673
Craven, 1920	323,412	15,488,629	47.94	13,256,829	28,745,458	9,352,424	38,097,882
Cumberland, 1919	338,497	3,116,070	9.21	2,513,375	6,348,011	4,990,251	11,338,262
Cumberland, 1920	358,317	12,835,535	35.82	7,393,804	20,522,039	7,567,734	28,089,773
Currituck, 1919	148,426	1,513,584	10.20	.....	1,733,291	705,677	2,438,968
Currituck, 1920	125,080	4,541,124	36.30	.....	4,541,124	1,033,871	5,574,995
Dare, 1919	208,400	494,859	2.37	100,929	626,963	301,642	928,605
Dare, 1920	.....	.....	....	.....	2,282,743	593,808	2,876,551
Davidson, 1919	35,442	.....	....	.....	6,957,305	3,806,554	10,763,859
Davidson, 1920	355,066	15,295,793	....	6,611,775	30,638,102	9,691,903	40,330,005

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Davie, 1919	160,640	1,529,050	9.52	358,529	2,294,469	3,043,548	5,338,017
Davie, 1920	162,798	7,224,899	44.00	2,753,491	9,978,390	3,939,443	13,917,833
Duplin, 1919	449,760	3,689,316	8.20	850,138	4,723,287	4,976,607	9,699,894
Duplin, 1920	457,279	23,071,185	50.45	1,100,364	24,211,549	7,285,518	31,497,067
Durham, 1919	178,534	3,569,232	19.99	8,021,399	14,777,121	20,808,813	35,585,934
Durham, 1920	182,608	9,530,019	52.19	19,560,602	43,426,847	66,651,182	110,078,029
Edgecombe, 1919	303,562	4,131,420	13.60	3,036,247	7,867,565	7,415,180	15,282,745
Edgecombe, 1920	309,497	24,897,646	80.44	10,054,910	34,955,056	10,256,906	45,211,962
Forsyth, 1919	230,680	2,871,776	12.45	9,546,925	14,234,803	22,223,137	36,457,990
Forsyth, 1920	237,190	13,961,294	58.86	21,757,422	72,197,173	64,402,548	136,599,721
Franklin, 1919	303,215	3,082,712	10.16	1,482,479	4,607,194	4,565,486	9,172,680
Franklin, 1920	301,008	14,667,266	48.73	1,927,314	16,594,580	6,167,700	22,762,367
Gaston, 1919	201,263	2,648,515	13.16	2,807,246	11,302,506	8,192,666	19,495,172
Gaston, 1920	211,528	14,233,409	67.29	11,767,733	52,344,289	22,745,959	75,090,248
Gates, 1919	196,651	1,830,440	9.31	136,799	1,986,648	1,433,647	3,420,295
Gates, 1920	158,145	5,250,857	33.20	326,225	5,631,242	1,663,562	7,294,894
Graham, 1919	177,414	984,505	5.55	28,350	2,132,988	599,954	2,732,942
Graham, 1920	195,803	2,106,480	10.76	46,350	4,809,736	1,337,240	6,206,976
Granville, 1919	319,516	2,839,542	8.88	1,267,086	4,324,621	4,571,084	8,895,705
Granville, 1920	334,774	9,515,391	38.20	3,463,640	16,088,145	6,775,885	22,864,030
Greene, 1919	159,369	1,946,611	12.21	295,283	2,250,882	3,391,246	5,642,128
Greene, 1920	159,276	13,358,939	83.87	984,687	14,343,626	5,666,466	20,010,092
Guilford, 1919	393,239	6,646,810	16.90	9,183,654	18,884,912	12,058,586	30,943,498
Guilford, 1920	394,318	20,889,651	52.98	22,906,580	85,158,132	30,894,441	116,052,573
Halifax, 1919	409,577	4,404,845	10.75	2,349,656	8,675,643	10,385,714	19,061,357
Halifax, 1920	425,386	16,359,967	38.22	6,436,375	35,636,872	12,536,587	48,173,459
Harnett, 1919	353,154	3,077,468	8.65	740,537	4,742,889	5,425,881	10,168,771

Harnett, 1920	346,418	14,418,178	41.62	3,514,044	20,823,234	8,165,342	28,988,576
Haywood, 1919	321,154	3,037,607	9.45	1,779,507	6,120,975	2,762,717	8,883,692
Haywood, 1920	343,881	10,960,771	31.87	4,024,593	17,326,364	6,080,935	23,407,299
Henderson, 1919	199,895	2,150,723	10.86	1,862,495	4,173,152	1,881,099	6,054,251
Henderson, 1920	195,716	4,689,786	23.00	3,796,873	11,322,157	3,101,037	14,423,194
Hertford, 1919	204,576	2,118,831	10.36	629,451	2,840,986	3,090,703	5,931,869
Hertford, 1920	201,537	8,738,122	43.36	1,991,046	10,747,168	3,609,665	14,356,833
Hoke, 1919	224,703	2,129,767	9.48	300,364	2,653,091	2,020,935	4,674,026
Hoke, 1920	221,230	9,967,450	45.05	944,313	11,244,263	2,995,910	14,240,173
Hyde, 1919	275,961	1,540,190	5.58	40,230	1,619,250	1,071,108	2,690,358
Hyde, 1920	420,604	11,837,110	28.14	443,911	12,281,021	2,035,801	14,316,822
128 Iredell, 1919	363,920	3,754,812	10.32	2,726,620	7,376,308	6,785,263	14,161,571
Iredell, 1920	364,507	15,358,713	42.63	6,728,014	26,500,459	10,117,767	36,618,226
Jackson, 1919	291,748	1,555,849	5.33	188,013	2,168,624	1,993,645	4,162,269
Jackson, 1920	319,180	6,068,768	19.01	222,843	6,608,611	3,149,193	9,757,804
Johnston, 1919	481,735	5,092,429	10.57	1,973,354	7,912,383	10,322,128	18,234,511
Johnston, 1920	498,946	32,620,897	65.38	7,092,072	42,030,148	15,477,315	57,507,463
Jones, 1919	291,477	1,666,958	5.72	260,788	1,969,921	1,378,496	3,348,417
Jones, 1920	294,634	7,585,777	25.75	712,063	8,447,840	2,255,143	10,702,983
Lee, 1919	155,733	1,467,390	9.42	926,313	2,735,378	2,144,202	4,679,580
Lee, 1920	163,139	6,712,698	41.15	1,019,819	8,706,469	3,371,944	12,078,413
Lenoir, 1919	222,375	2,205,289	9.92	2,329,826	4,859,933	5,518,123	10,378,056
Lenoir, 1920	239,868	20,753,505	86.52	11,629,585	33,857,010	10,910,400	44,767,410
Lincoln, 1919	179,225	2,119,195	11.82	586,071	3,446,982	4,256,437	7,703,419
Lincoln, 1920	193,391	7,504,532	38.80	2,009,709	12,584,088	5,417,219	18,001,307
Macon, 1919	260,925	1,490,137	5.71	406,713	2,006,353	1,293,125	3,299,478
Macon, 1920	275,716	5,011,838	18.18	189,631	5,201,469	1,330,869	6,532,338
Madison, 1919	262,922	2,108,634	8.02	392,267	3,241,392	2,617,167	5,858,559
Madison, 1920	278,933	7,576,333	27.16	791,445	8,367,778	2,775,922	11,143,700
Martin, 1919	267,953	2,956,812	11.13	941,390	4,116,229	4,768,842	8,885,071
Martin, 1920	287,276	12,848,746	44.72	2,699,065	15,613,311	6,799,760	22,413,071
McDowell, 1919	254,751	.....	....	.....	2,675,983	1,042,136	3,718,119
McDowell, 1920	241,210	2,814,834	11.67	1,540,981	8,139,746	3,861,589	12,001,335
Mecklenburg, 1919	313,806	4,032,705	12.85	13,112,770	23,133,825	15,082,064	38,217,889
Mecklenburg, 1920	314,277	14,423,868	67.31	56,054,830	93,500,878	33,585,655	127,086,533
Mitchell, 1919	128,935	718,301	5.57	76,756	795,057	650,049	1,445,106
Mitchell, 1920	138,372	4,027,771	29.11	278,203	4,340,208	1,133,117	5,473,325

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Montgomery, 1919.....	288,986	1,766,532	6.11	629,642	2,858,839	2,478,702	5,337,541
Montgomery, 1920.....	289,109	5,090,834	17.60	1,738,731	6,830,165	3,091,370	9,921,535
Moore, 1919.....	415,165	3,178,355	7.65	1,871,452	5,434,221	3,005,237	8,439,458
Moore, 1920.....	401,486	8,004,405	19.93	5,240,261	15,604,749	5,224,372	20,829,121
Nash, 1919.....	335,415	3,878,799	11.50	3,219,117	7,865,680	8,391,768	16,257,448
Nash, 1920.....	323,886	20,867,100	67.82	9,818,482	36,300,096	12,130,528	48,430,624
New Hanover, 1919.....	92,962	2,100,440	22.59	10,087,280	14,941,453	5,406,709	20,348,162
New Hanover, 1920.....	114,132	3,171,311	28.05	14,309,005	37,517,377	12,528,021	50,045,398
Northampton, 1919.....	318,278	3,705,130	11.64	623,790	4,463,235	4,436,914	8,900,149
Northampton, 1920.....	331,152	11,257,234	33.99	1,110,300	12,367,534	4,772,232	17,139,766
Onslow, 1919.....	342,132	2,846,648	8.32	489,741	4,772,360	2,651,357	7,423,717
Onslow, 1920.....	416,808	7,308,697	20.69	992,565	10,807,997	2,756,647	13,564,644
Orange, 1919.....	241,018	1,951,875	7.78	1,051,230	3,916,209	3,078,757	6,994,966
Orange, 1920.....	244,404	7,866,281	32.19	2,219,764	10,086,045	6,222,234	16,308,279
Pamlico, 1919.....	197,344	1,291,248	6.51	217,596	1,519,204	832,713	2,351,917
Pamlico, 1920.....	190,034	4,008,264	21.09	457,130	5,546,213	1,410,210	6,956,423
Pasquotank, 1919.....	148,427	1,678,547	11.31	2,136,000	4,120,322	2,922,259	7,042,581
Pasquotank, 1920.....	137,882	5,016,537	33.04	2,984,095	13,421,447	5,980,231	19,401,678
Pender, 1919.....	309,026	1,801,116	5.83	241,571	2,219,798	1,616,117	3,835,915
Pender, 1920.....	451,802	7,307,962	16.17	633,713	8,492,798	2,019,023	10,511,821
Perquimans, 1919.....	151,630	1,431,991	9.44	473,929	2,009,068	1,684,783	3,693,851
Perquimans, 1920.....	135,126	4,579,632	33.89	1,035,330	5,739,609	2,359,005	8,098,714
Person, 1919.....	248,726	1,907,348	7.67	491,389	2,633,069	2,368,806	5,001,875
Person, 1920.....	254,630	10,097,690	39.65	1,751,638	12,452,278	3,624,517	16,070,795
Pitt, 1919.....	377,008	4,386,655	11.64	2,896,842	7,464,487	8,655,875	16,120,362
Pitt, 1920.....	395,113	33,378,935	87.54	10,810,632	44,254,598	17,617,391	61,871,989
Polk, 1919.....	131,161	1,031,414	7.86	630,604	1,662,018	759,328	2,421,346
Polk, 1920.....	130,925	3,221,221	24.61	403,878	5,043,541	3,691,363	8,734,904

Randolph, 1919.....	450,446	3,426,965	7.61	1,189,826	5,390,639	4,514,894	9,905,333
Randolph, 1920.....	489,717	13,352,406	27.27	2,842,531	18,468,305	7,049,532	25,517,837
Richmond, 1919.....	271,037	1,733,510	6.39	1,610,266	5,067,210	3,581,552	8,648,762
Richmond, 1920.....	298.155	8,335,941	28.63	5,335,137	18,450,390	8,000,022	26,450,412
Robeson, 1919.....	508,200	5,661,400	11.14	2,326,580	9,063,675	8,063,294	17,126,969
Robeson, 1920.....	544,258	41,507,181	76.23	3,410,336	48,024,939	16,401,672	64,426,611
Rockingham, 1919.....	345,078	3,213,287	9.08	2,215,162	8,399,673	7,917,904	16,317,477
Rockingham, 1920.....	354,743	20,502,620	57.79	17,139,898	47,813,378	24,561,986	72,375,364
Rowan, 1919.....	315,694	3,506,437	11.11	4,975,488	9,727,065	6,753,857	16,480,922
Rowan, 1920.....	319,701	14,383,945	46.00	14,703,488	38,548,806	8,802,070	47,350,876
Rutherford, 1919.....	323,305	2,660,608	8.23	635,344	4,331,111	3,204,275	7,535,386
Rutherford, 1920.....	326,699	12,869,438	39.33	717,300	19,912,642	8,824,619	28,737,261
Sampson, 1919.....	530,046	3,850,395	7.26	678,681	4,539,778	4,864,205	9,403,983
Sampson, 1920.....	578,092	16,169,478	28.00	2,181,805	22,717,990	9,305,331	32,023,240
Scotland, 1919.....	190,468	2,194,402	11.52	708,682	3,661,138	2,732,179	6,393,317
Scotland, 1920.....	190,381	15,478,175	81.30	3,520,521	21,319,716	7,693,755	29,013,471
Stanley, 1919.....	228,929	1,794,885	7.84	1,109,296	4,727,603	3,983,469	8,711,172
Stanley, 1920.....	245,668	10,574,057	43.04	3,745,636	21,225,000	10,608,893	31,833,893
Stokes, 1919.....	274,915	2,364,379	8.60	212,216	2,618,965	3,512,301	6,131,266
Stokes, 1920.....	286,724	10,328,827	36.02	544,334	10,873,161	4,310,595	15,183,756
Surry, 1919.....	330,406	3,850,503	11.65	1,737,885	5,796,250	5,375,888	11,172,138
Surry, 1920.....	347,849	13,476,044	38.72	5,053,375	18,529,419	7,845.186	26.374,605
Swain, 1919.....	346,039	2,275,531	6.56	348,794	2,657,925	1,908,527	4,566,452
Swain, 1920.....	346,196	6,057,460	17.49	596,960	6,830,920	2,619,045	9,449,965
Transylvania, 1919.....	197,595	1,518,091	7.68	382,984	2,044,250	1,308,115	3,352,365
Transylvania, 1920.....	198,554	4,684,341	23.59	462,625	5,304,466	2,597,049	7,901,515
Tyrrell, 1919.....	192,927	974,680	5.05	117,342	1,105,114	645,502	1,750,616
Tyrrell, 1920.....	169,491	2,917,151	17.21	235,845	3,152,996	1,069,834	4,222,830
Union, 1919.....	389,203	2,975,210	7.65	1,714,833	5,092,979	6,205,125	11,298,104
Union, 1920.....	392,429	15,605,830	39.77	4,671,356	21,444,971	10.172,675	31,617,646
Vance, 1919.....	161,724	2,103,131	13.00	1,776,205	4,550,421	5,579,175	10,121,596
Vance, 1920.....	167,208	9,428,756	56.39	5,553,505	17,856,566	8,662,735	26,519,301
Wake, 1919.....	531,678	5,708,809	10.73	11,038,122	19,342,872	12,302,850	31,645,722
Wake, 1920.....	506,877	23,181,356	45.73	25,987,726	53,739,885	18,726,589	73,900,221
Warren, 1919.....	255,618	2,568,511	10.49	875,602	3,556,222	3,828,467	7,384,689
Warren, 1920.....	277,193	10,277,899	36.89	1,926,632	12,373,446	4,851,406	17,224,852
Washington, 1919.....	200,868	1,586,739	7.90	501,569	2,180,780	1,556,516	3,737,296

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Washington, 1920.....	136,375	6,118,254	26.88	1,010,540	7,468,873	2,231,456	9,700,329
Watauga, 1919.....	207,881	1,632,998	7.85	140,420	1,773,418	1,938,899	3,712,317
Watauga, 1920.....	217,097	6,750,358	31.09	501,234	8,820,897	2,419,708	11,240,605
Wayne, 1919.....	340,735	3,771,064	11.07	4,026,567	8,449,151	9,173,853	17,623,004
Wayne, 1920.....	339,270	27,607,644	81.37	14,860,096	47,323,132	17,666,582	64,989,714
Wilkes, 1919.....	467,528	2,991,286	6.40	668,155	3,780,058	3,014,511	6,794,569
Wilkes, 1920.....	469,130	7,999,140	17.05	880,767	12,352,008	4,357,959	16,709,962
Wilson, 1919.....	223,631	2,866,661	12.82	3,109,243	6,323,509	9,005,000	15,328,509
Wilson, 1920.....	236,077	26,715,771	113.17	13,685,529	40,401,300	20,069,562	60,470,862
Yadkin, 1919.....	211,977	1,999,500	9.43	218,745	2,233,845	1,926,589	4,160,434
Yadkin, 1920.....	212,459	8,992,113	42.32	659,503	9,651,616	2,772,947	12,424,563
Yancey, 1919.....	174,935	1,142,880	6.53	83,079	1,335,074	1,204,819	2,539,893
Yancey, 1920.....	184,300	6,981,404	37.88	126,724	7,144,065	2,583,189	9,727,254

129 *Opinion of the Court.*

Filed March 21, 1922.

In the District Court of the United States.

In Equity.

SOUTHERN RAILROAD COMPANY, ATLANTIC AND YADKIN RAILWAY Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Norfolk-Southern Railroad Company

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue and Others.

Before Waddill, Circuit Judge, Boyd and Connor, District Judges.

Per Curiam:

Bills were filed in equity by the above named Companies, to-wit: The Southern Railroad Company and the Atlantic and Yadkin Railway Company in the United States District Court for the Western Division of North Carolina and the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk Southern Railroad Company, in the Eastern District of North Carolina, against the defendants A. D. Watts and A. D. Watts, as Commissioner of Revenue, Baxter Durham, Auditor, Benjamin R. Lacy, Treasurer, and James S. Manning, Attorney General of North Carolina, in which, for the causes therein set forth they and each of them, prayed for an Interlocutory Injunction restraining and enjoining said defendants, in their individual and official capacity, from proceeding with the collection and the enforcement of payment against complainants, of certain taxes assessed, or about to be assessed, against complainants and their property, until the final hearing of said causes, for that, among other things alleged in the bills, the statutes of the State of North Carolina under, and pursuant to which, said taxes were assessed and sought to be enforced, were unconstitutional and void. Pursuant to the provisions of Section 266 of the Judicial Code, James E. Boyd, Judge of the Western District, called to his assistance in hearing said motions for Interlocutory Injunction in said causes, brought in the Western District, Edmund Waddill, Jr., Circuit Judge, of the Fourth Circuit, and H. G. Connor, Judge of the District Court of the Eastern District of North Carolina,
130 and H. G. Connor, Judge of the Eastern District, called to his assistance in hearing said motions, brought in the Eastern District, Edmund Waddill, Jr., Circuit Judge of the Fourth Circuit and James E. Boyd, Judge of the District Court of the Western District of North Carolina.

As required by the provisions of the statute, the said District Judges in the causes pending in said District, made orders in which they

directed the defendants to show cause, at a time and place therein named, why the Interlocutory Injunction should not be granted as prayed for.

The motions in said causes were, by consent of complainants and defendants, by their attorneys, heard together, at Greensboro, N. C., on January 24th, 1922, when and where said Judges being present said motions were heard upon the bills, answers, affidavits, exhibits and argument of counsel, for all parties in said causes.

The further consideration of the motions was by consent of the counsel, and order of the Court, continued to Raleigh, N. C., on March 16, 1922, when and where said Judges being present, proceeded to consider said motions upon the pleadings, affidavits, exhibits and briefs filed by counsel.

It appears from the bills and answers that the said motions, and prayer for final relief of complainants, are based upon the following allegations and contentions:

1. That the property of complainants was not assessed in the same manner and by the same method as the property of the individual citizens of the State and that the manner and methods by which complainant's property is appraised and assessed for taxation, operates as an unjust and unlawful discrimination against complainants, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and that, thereby, complainants are deprived of their property without due process of law.

2. That the appraisal and assessment for taxation of the property of complainants are not made in accordance with the provisions of the Constitution and Statutes of the State of North Carolina and that said appraisal and assessment of taxes thereon are invalid.

3. That the appraisal of the value of complainant's property is in excess of its true value, for the purpose of taxation, as provided by the Constitution of North Carolina, and is, therefore, invalid.

131 4. That the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States in the appraisal and assessment of complainants' property are violated, in that, complainants' property, alleged by the State to be assessed at its true value for taxation, the property of other taxpayers in the State, is appraised and assessed for taxation at less than its true value.

That the Franchise or Privilege Tax imposed upon complainants is invalid for that:

1. The ad valorem assessment is in excess of its true value for taxation and that the Franchise, or Privilege Tax, based thereon, in accordance with the Statutes of the State, violates the Constitution of the United States and the State of North Carolina.

2. The Franchise or Privilege Tax is in truth and fact an ad valorem tax and invalid, because not imposed upon the property of other citizens of the State.

3. That the Statute of North Carolina under, and pursuant to which the Franchise or Privilege Tax is imposed and sought to be enforced imposes a tax upon the privilege of doing business by complainant, both interstate and intrastate and is, therefore, a burden upon interstate commerce and thereby violates the Commerce Clause of the Constitution of the United States.

4. That, if the Franchise, or Privilege Tax, imposed upon complainants be valid, the method of ascertaining the value of comants' property as a basis for fixing the amount of said Franchise or Privilege Tax includes property of complainants used, as well in interstate as intrastate business and is, therefore, a burden upon interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

The Court, after consideration of the bills, exhibits, affidavits and argument of counsel, is of the opinion that, for the purpose of this motion only, complainants have neither in their pleadings, nor upon the proofs adduced, made such a case as entitles them to have an Interlocutory Injunction in said causes as prayed for and
132 the motions for such interlocutory injunctions in respect to the ad valorem and the Franchise and Privilege Tax should not be granted and said motions and each of them are denied.

The Court is of the opinion that the contentions sought to be made by complainants in regard to the imposition and enforcement of the Income Tax against complainants, as provided by the Constitution of North Carolina, Article 5, Section 3, as amended, and the statutes enacted by the Legislature pursuant thereto and for the enforcement thereof are not presented upon the bills and proofs herein.

The Court, therefore, does not pass upon, or express any opinion in respect to the validity of the Income Tax, or the statutes enacted for its enforcement. Complainants may, in respect to such Income Tax, proceed without prejudice in such manner as they may be advised.

Let this opinion, and a copy thereof, be filed and an order drawn and signed to be filed in the record in each of said causes in accordance therewith.

The further proceedings in said causes, in the Courts of the District, in which they are pending, will be had as provided by the Judicial Code and the course and practice of said Courts. The costs of the motion will abide the final decrees in said causes.

At Raleigh, North Carolina,
This the 18th day of March, 1922.

(S.) EDMUND WADDILL, JR.,
United States Circuit Judge,
Fourth Judicial Circuit.

(S.) JAS. E. BOYD,
United States District Judge,
Western District of North Carolina.

(S.) H. G. CONNOR,
United States District Judge,
Eastern District of North Carolina.

133 *Order Denying Interlocutory Injunction.*

Filed March 18, 1922.

In the United States District Court for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS, Commissioner of Revenue, and Others, Defendants.

This cause came on this 18th day of March, 1922, before the United States District Court for the Eastern District of North Carolina, held by the undersigned three United States judges sitting pursuant to the provisions of Section 266 of the Judicial Code, to be heard upon a motion for an interlocutory injunction to enjoin and restrain the State of North Carolina from collecting certain taxes enumerated in the complainant's bill, which motion was heard and considered upon the pleadings, and the affidavits filed respectively by the complainant and the defendants, and was argued by counsel, Whereupon the court composed of the three judges sitting as aforesaid, having filed an opinion denying the right of the complainant to have an interlocutory injunction, it is, for reasons stated in writing in said opinion filed in this cause, and pursuant thereto, adjudged, ordered and decreed That said injunction so prayed for, be and the same is hereby refused and denied. And it is further ordered that the defendants shall not proceed to enforce the collection of taxes involved in this litigation, for the period of thirty days from the date of this order, to the end that complainant may take such action in the premises as it is advised to.

(S.) EDMUND WADDILL, JR.,
United States Circuit Judge,
Fourth Judicial Circuit.

(S.) JAS. E. BOYD,
United States District Judge,
Western District of North Carolina.

(S.) H. G. CONNOR,
United States District Judge,
Eastern District of North Carolina.

134 *Notice of Application for Appeal and Stay of Proceedings.*

Filed March 30, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. —.

SEABOARD AIR LINE COMPANY.

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

To the defendants in the above entitled action and Honorable James S. Manning, Attorney General of North Carolina, and Frank Nash, Assistant Attorney General, solicitors for defendants:

You will please take notice that on Thursday, March 30th, 1922, at 10:00 o'clock A. M., or as soon thereafter as counsel may be heard, the above named complainant will apply to His Honor, Henry G. Connor, District Judge, at office in Wilson, N. C., for an order allowing the complainant to appeal to the Supreme Court of the United States and granting a stay of proceedings until the appeal shall have been heard, passed upon and disposed of by the Supreme Court of the United States.

SEABOARD AIR LINE RAILWAY COMPANY,
By MURRAY ALLEN,
Solicitor.

Filed at Wilson, N. C., March 30, 1922.
H. G. CONNOR,
U. S. Dist. Judge.

135 *Assignment of Errors.*

Filed Mar. 30, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS, Commissioner of Revenue, et. als., Defendants.

Now comes the complainant, in the above entitled cause, and in connection with its petition for appeal from the Order entered March 18th, 1922, (by the Court convened under Section 266 of the Judicial Code of the United States), denying the motion for interlocutory injunction, files the following assignments of error:

The Court erred:

1. In decreeing that the interlocutory injunction be denied.

2. In holding that for the purpose of the motion for an interlocutory injunction only, complainant neither in its pleadings, nor upon the proof adduced, is entitled to have the interlocutory injunction applied for.

3. In failing to hold that the assessment of complainant's property for taxation is in excess of the true "actual value" of the said property as defined by the tax laws and as required by the Constitution of North Carolina, and is, therefore, invalid.

4. In failing to hold that the assessment of complainant's property for taxation is not made in accordance with the provisions of the Constitution and statutes of North Carolina, and that said assessment is invalid.

5. In failing to hold that the manner and method by which complainant's property was assessed is illegal and operates as an unjust and unlawful discrimination against complainant in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States, and that thereby complainant is deprived of its property without due process of law and denied the equal protection of the law.

136

6. In failing to hold that the action of the Commissioner of Revenue, in declining to make a reduction in the value of complainant's property, commensurate with the horizontal reductions made by the taxing authorities under the North Carolina law per-

mitting such reductions on other property generally, was unjust discrimination, contrary to the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States.

7. In failing to hold that the Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States are violated, in that complainant's property is alleged by the State to be assessed at its true value for taxation, while the property of other taxpayers generally in the State is appraised and assessed for taxation at less than its true value in money and that this appraisal and assessment of the property of other citizens and taxpayers of the State has been long continued and is arrived at under a scheme of taxation which shows intent to place an undue burden of taxation upon complainant and its property.

8. In failing to hold that the scheme of taxation of the State of North Carolina and the assessment of the properties of the various classes of taxpayers is by settled purpose and intent so designed and carried out that, while the property of complainant is assessed at its true value in money, or more than its true value in money, the large proportion of the property in the State is assessed at less than its true value in money, thereby casting an undue and excessive burden upon complainant, in violation of the Uniformity Clause of the Constitution of the State of North Carolina and in violation of the Fourteenth Amendment to the Constitution of the United States.

137 9. In failing to hold that the ad valorem assessment being in excess of true value for taxation, the so-called Franchise tax based thereon violates the Constitution of North Carolina and the Constitution of the United States.

10. In failing to hold that the so-called Franchise or Privilege tax is in truth and in fact an additional ad valorem or property tax upon complainant's property and is illegal and invalid because levied for the support of the State and is not levied equally upon the property of other citizens and taxpayers of the State, and the enforcement of such void statute deprives complainant of its property without due process of law, contrary to the Constitution of the United States.

11. In failing to hold that the so-called Franchise or Privilege tax is under the statute imposed as a license or privilege tax for the privilege of engaging in inter and intrastate commerce, and is therefore a burden upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

12. In failing to hold that if the Franchise or Privilege tax be imposed for the privilege of engaging in intrastate commerce, it is measured in part by the value of the privilege of engaging in interstate commerce, in that it is based upon the entire value, including values derived from use in interstate commerce, and is, therefore, a burden imposed upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

13. In failing to hold that the payment of the so-called Franchise or Privilege tax is exacted as a condition precedent to the right of complainant to do "any business" in the State, whether interstate or intrastate, and, therefore, unconstitutional and void.

14. In failing to hold that the assessment made is void, in that it includes in the value used as a basis for arrival at the Franchise or Privilege tax the value of property not used in the business for
138 which the privilege is exacted, and such law and the enforcement thereof, in the manner set forth, violates the Fourteenth Amendment to the Constitution of the United States.

15. In failing to hold that the tax system of the State of North Carolina, which includes an ad valorem tax on the full value of its property in the State, including as a part thereof value it has due to its use in interstate commerce, plus a franchise or privilege tax upon the full value of the said property for ad valorem purposes, plus an income tax of three per cent on its net operating income, does, in practical operation, result in a burden upon interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

16. In failing to hold that the so-called Franchise or Privilege tax is levied upon an erroneous assessment of complainant's property, in that the said property is assessed at its true value, or more than its true value, whereas, the property of individuals and other corporations is assessed at less than its true value, and complainant has been illegally denied deductions in valuation allowed other corporations and individuals.

17. In failing to hold that the so-called Franchise or Privilege tax is unconstitutional and void, in that the Legislature of North Carolina has not levied a tax on property for the support of the State government, as required by Section 3, Article 5, of the Constitution of North Carolina, but has attempted to levy revenue for the support of the State government by franchise, income, inheritance and taxes of similar nature.

MURRAY ALLEN,
Solicitor for Complainant.

139 *Order Continuing Hearing of Application for Appeal and Stay.*

Filed March 31, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

Order.

The plaintiff in the above entitled cause having presented its application for appeal to the Supreme Court from an order of Circuit Judge Waddill, and District Judges Boyd and Connor, dated March 18, 1922, and its application for a stay pending the decision of the Supreme Court upon appeal and counsel for defendants having requested of the Court a continuance,

It is now ordered that this application be continued to be heard before me at Wilson, North Carolina, at Chambers, at 11 o'clock A. M. April 8th, 1922.

That copies of this order be mailed to the Attorney General and his associate counsel.

This, the 30th day of March, 1922, at Wilson, North Carolina.

(S.) H. G. CONNOR,
United States District Judge.

140 *Order Denying Stay.*

Filed Apr. 18, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

Order.

This matter coming on to be herd at Raleigh, North Carolina, on April 15th, 1922, on application of plaintiff for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18th, 1922, until the appeal heretofore taken shall have been heard, passed upon and disposed of by the Supreme Court of the United States, and all parties being represented by counsel now before the Court:

The Court, being of the opinion that the application to continue in effect the thirty day stay granted March 18th, 1922, until a review and decision can be had by the Supreme Court of the United States on the appeal heretofore taken from the order of this Court, denying the interlocutory injunction, should be presented to the Supreme Court of the United States.

And it appearing to the Court that the hearing of this application has been delayed through no fault of plaintiff's, and the Court being of the opinion that the status quo should be continued until the application for restraint pending the appeal can be made to and decided by the Supreme Court of the United States, orders that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order.

EDMUND WADDILL, JR.,
United States Circuit Judge,
Fourth Judicial Circuit.

JAS. E. BOYD,
United States District Judge,
Western District of North Carolina.

H. G. CONNOR,
United States District Judge,
Eastern District of North Carolina.

141 *Stipulation of Counsel as to Record.*

Filed Apr. 15, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

It is stipulated and agreed by and between the parties to the above entitled cause:

That the Clerk, in making up the transcript of record on this appeal from the Order denying complainant's motion for an interlocutory injunction, shall include all pleadings, orders, motions, stipulations, affidavits and exhibits, constituting the entire record before the Court, except there may be omitted from the record the following:

1. The Clerk shall not include as a part of the transcript the individual affidavits of the Registers of Deeds of the 100 Counties in the State of North Carolina, together with the tabulated lists of conveyances recorded from January 1, 1921, to June 30, 1921, and setting forth opposite each conveyance the consideration in the deed and the assessed value for taxation of the property conveyed.

2. Return of the service of the notice of the hearing on complainant's application for an interlocutory injunction.

3. Return of the service of the writ upon the various defendants.

The Clerk shall include as a part of the transcript one of the said affidavits, to-wit, that from Mecklenburg County, North Carolina, together with the tabulated statement of deeds recorded and the deed value of each parcel conveyed and the assessed value for taxation of each parcel so conveyed, these being typical of all as to the form and character of information contained therein. It is unnecessary to set forth the individual affidavits of deed and tax value taken from the records of each separate County in the State, because the information shown on said separate affidavits, containing the deed value of 7,431 separate conveyances and a comparison of the tax assessment of each said parcel, is summarized in the affidavit of C. J. O'Brien which is to be included in the transcript.

It is further stipulated that the Clerk may use in preparing the record on appeal printed copies of all such pleadings, documents, affidavits, etc., as may be furnished by the parties hereto.

(S.) MURRAY ALLEN,
Solicitor for Complainant.

(S.) JAMES S. MANNING,
Solicitor for Defendants,
Attorney General of North Carolina.

142 *Memorandum of Original Papers Certified Separately.*

Petition for Appeal filed March 30, 1922.
Appeal allowed April 15, 1922.
Appeal Bond dated April 18, 1922; penalty $1,000.00; Obligors: Seaboard Air Line Railway Company and Royal Indemnity Company: Conditioned for damages and costs.
Citation dated April 15th, 1922; service accepted April 15, 1922, by James S. Manning, Attorney General of North Carolina, for A. D. Watts, Commissioner of Revenue, and other defendants.

143 *Order to Transmit Record.*

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et als.

Order to Transmit Record.

And thereupon it is ordered by the Court here that a transcript of the record and proceedings in said suit, be transmitted to the United States Supreme Court at Washington, D. C., and the same is transmitted accordingly.

S. A. ASHE,
Clerk United States District Court.

144 *Clerk's Certificate.*

In the District Court of the United States for the Eastern Disrict of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et als.

Clerk's Certificate.

I, S. A. Ashe, Clerk, United States District Court, for the Eastern District of North Carolina, do hereby certify that the foregoing pages present a full, true and correct copy of the proceedings had and orders entered in that certain suit in equity pending in said Court, wherein Seaboard Air Line Railway Company is complainant and A. D. Watts, Commissioner of Revenue of North Carolina, and others are defendants.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said District Court at the Courthouse in Raleigh, State of North Carolina, this 5th day of May, 1922.

[Seal of United States District Court, Eastern District of N. C., at Raleigh.]

S. A. ASHE,
Clerk United States District Court.

145 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Complainant,

vs.

A. D. WATTS, Commissioner of Revenue et als., Defendants.

To the Honorable H. G. Connor, District Judge of the United States for the Eastern District of North Carolina:

The Seaboard Air Line Railway Company, the above named complainant, feeling aggrieved by the order of the Court, consisting of

Circuit Judge Waddill and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code of the United States, entered in the above entitled cause on the 18th day of March, 1922, refusing and denying the interlocutory injunction applied for in this cause to restrain the defendants, until the cause could be heard on its merits, does, as provided in Section 266 of the Judicial Code of the United States, hereby appeal to the Supreme Court of the United States from the Order refusing and denying the interlocutory injunction applied for upon the grounds set forth in the assignments of error filed herewith, and complainant prays that its appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings, and documents upon which said appeal is based, duly authenticated, be sent to the Supreme Court of the United States, under the rules of such Court in such cases made and provided.

And complainant further prays that the Court enter an Order continuing in effect the thirty day stay granted by the Court in the Order entered March 18th, 1922, or an order granting a stay of proceedings by the defendants, until the appeal herein prayed for shall have been heard, passed upon and disposed of by the Supreme
146 Court of the United States.

SEABOARD AIR LINE RAILWAY COMPANY,
By MURRAY ALLEN,
Solicitor.

146½ [Endorsed:] #442. Eq. S. A. L. vs. Watts. Petition for Appeal. I certify that the within is entered and filed this day. Apr. 15, 1922. S. A. Ashe, Clerk. Filed at Wilson, N. C., March 30th, 1922. H. G. Connor, District Judge.

147 [Endorsed:] #442. Eq. In Equity. No. 442. Seaboard Air Line Railway Company vs. A. D. Watts, Commissioner of Revenue, et als. Application for appeal and stay of proceedings pending appeal. Filed at Wilson, N. C. March 30th, 1922. H. G. Connor. District Judge. I certify that the within is entered and filed this day. Apr. 15, 1922. S. A. Ashe, Clerk. Murray Allen, Attorney at Law, 709-711 Citizens National Bank Building, Raleigh, N. C.

148 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY, Plaintiff,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et al., Defendants.

This matter coming on to be heard on the application of plaintiff for an appeal to the Supreme Court of the United States, under Section 266 of the Judicial Code of the United States, from the decree entered in this cause on the 18th day of March, 1922, refusing and denying the interlocutory injunction applied for; and upon the assignment of errors filed in said cause and presented to the Court with the said application for appeal and for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18th, 1922, until the appeal prayed for shall have been heard, passed upon, and disposed of by the Supreme Court of the United States;

And all parties being represented by counsel now before the Court on due notice.

It is ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the order and decree filed and entered herein on the 18th day of March, 1922, refusing and denying the interlocutory injunction prayed for, upon the giving of bond in the sum of $1,000.00.

It is further ordered that citation of appeal issue and be served upon the defendants or their attoneys of record, and that the Clerk of this Court prepare and forward to the Supreme Court of the United States a transcript of the record of the proceedings, pleadings, affidavits, etc., upon which the judgment herein was rendered, duly authenticated.

This 15th day of April, 1922.

H. G. CONNOR,
U. S. District Judge,
Eastern District of North Carolina.

149 [Endorsed:] Equity. No. 442. Seaboard Air Line Railway Company vs. A. D. Watts et al. Order Allowing Appeal. I certify that the within is entered and filed this day. Apr. 15, 1922. S. A. Ashe, Clerk. Murray Allen, Attorney at Law, 709-711 Citizens National Bank Building, Raleigh, N. C.

150 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 442.

SEABOARD AIR LINE RAILWAY COMPANY

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina, et als.

Appeal Bond.

Know all men by these presents, that we, Seaboard Air Line Railway Company, as principal, and Royal Indemnity Company, as surety, are held and firmly bound unto A. D. Watts, Commissioner of Revenue of North Carolina, and others, defendants in the above entitled action, in the sum of One Thousand Dollars ($1,000.00) lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and each of our successors and assigns by these presents.

Sealed with our seals and dated this 18th day of April, 1922.

Whereas the above named Seaboard Air Line Railway Company has prosecuted an appeal to the Supreme Court of the United States to reverse the order rendered in the above entitled cause, denying the complainant's application for an interlocutory injunction:

Now, therefore, the condition of this obligation is such that if the above named Seaboard Air Line Railway Company shall prosecute its said appeal to effect and answer all costs and damages that may be awarded against it, if it fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

SEABOARD AIR LINE RAILWAY COMPANY, [SEAL.]
By MURRAY ALLEN,
Attorney.

[Seal of Royal Indemnity Company.]

ROYAL INDEMNITY COMPANY, [SEAL.]
By CHAS. E. JOHNSON, JR.,
Attorney in Fact.

Approved April 29, 1922.
H. G. CONNOR,
U. S. District Judge.

151 [Endorsed:] #442. Eq. Seaboard Air Line Railway Company vs. A. D. Watts, Commissioner of Revenue of North Carolina, et als. Appeal Bond. I certify that the within is entered

and filed this day. May 1, 1922. S. A. Ashe, Clerk. Murray Allen, Attorney at Law, 709-711 Citizens National Bank Building, Raleigh, N. C.

152 *Citation.*

Filed 15 Day of April, 1922. S. A. Ashe, Clerk.

UNITED STATES OF AMERICA:

The President of the United States to A. D. Watts and A. D. Watts as Commissioner of Revenue et al., Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be holden in the City of Washington, on the 8th day of May, next, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of North Carolina, wherein Seaboard Air Line Railway Company is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said appeal mentioned, should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand in the City of Raleigh, N. C., in the District above named, this 15th day of April, 1922.

H. G. CONNOR,
Judge of the District Court of the United States for the Eastern District of North Carolina.

Service of within citation accepted for all defendants April 15, 1922.

A. D. WATTS,
Commissioner of Revenue, and
OTHER DEFENDANTS,
By JAMES S. MANNING,
Attorney General of North Carolina.

I certify that the within is entered and filed this day.
Apr. 15, 1922.
S. A. ASHE,
Clerk.

[Endorsed:] #442. Eq. S. A. L. vs. Watts. Citation. I certify that the within is entered and filed this day. Apr. 15, 1922. S. A. Ashe, Clerk.

Endorsed on cover: File No. 28,915. E. North Carolina D. C. U. S. Term No. 960. Seaboard Air Line Railway Company, appellant, vs. A. D. Watts and A. D. Watts as commissioner of revenue of the State of North Carolina et al. Filed May 8th, 1922. File No. 28,915.

(28,916)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 961.

ATLANTIC COAST LINE RAILROAD COMPANY, APPELLANT,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE OF THE STATE OF NORTH CAROLINA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

INDEX.

	Original.	Print.
Record from the district court of the United States for the eastern district of North Carolina	1	1
Caption	1	1
Bill of complaint	2	1
Subpœna and marshal's return of service	57	36
Subpœna and marshal's return of service	59	37
Agreement for service of subpœna	61	38
Clerk's notation on subpœna	62	39
Application for interlocutory injunction	63	39
Notice of hearing of application for interlocutory injunction and marshal's return of service	65	40
Order on application for interlocutory injunction	68	42
Agreement for hearing	69	43
Motion to dismiss	70	43
Order denying motion to dismiss	71	44
Stipulation of counsel and interlocutory order	72	45
Answer	74	47
Exhibit A—Comparative statement of taxable values, 1919-20	106	68
Affidavit of Charles J. Joseph	110	75
Exhibit A—Letter, C. J. Joseph to J. D. Griffin, April 7, 1920	123	83

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 25, 1922.

	Original.	Print.
Exhibit B—Letter, J. D. Griffin to C. J. Joseph, May 17, 1920	126	85
C—Property investment table	129	87
D—Letter, J. D. Griffin to C. J. Joseph, June 10, 1920	130	88
E—Letter, Thomas W. Davis to North Carolina Corporation Commission, July 19, 1920	130	88
F—Statement of gross operating revenue	133	90
G—Letter, Thomas W. Davis to A. D. Watts, August 15, 1921	134	91
H—Letter, Thomas W. Davis to A. D. Watts, August 13, 1921	135	92
1—Statement of taxes in North Carolina	139	95
2—Tangible property of A. C. L. in North Carolina, 1921	140	96
3—Assessment of A. C. L., 1921	143	98
4—Taxes of A. C. L. by counties in North Carolina, 1921	145	100
5—Taxes of A. C. L. in North Carolina, 1921.	146	100
Affidavit of H. C. Prince	147	101
Exhibit A—Operating revenues, 1915-1921	153	105
Affidavit of P. R. Albright	155	106
H. L. Borden	157	107
S. R. Morton	158	108
R. E. Johnson	159	108
Raymond G. Parker	160	109
Philip L. Kainer	167	111
C. A. Vogler	171	112
J. P. Bunn	175	113
C. J. O'Brien	178	114
Affidavit of members of former tax commission of North Carolina	182	119
Motion to amend and order denying same	189	124
Amendment to bill of complaint denied	190	125
Additional affidavit of Charles J. Joseph	199	130
Per curiam opinion	204	133
Order denying interlocutory injunction	208	136
Notice of application for appeal and stay	209	137
Assignment of errors	210	138
Order fixing time for hearing application for appeal and stay	215	141
Order denying stay	216	142
Stipulation as to record	217	143
Memorandum of original papers certified separately	219	144
Order to transmit record	220	144
Clerk's certificate	221	145
Petition for appeal	222	145
Order allowing appeal and fixing bond	226	146
Bond on appeal	230	147
Citation and service	234	149

1 TRANSCRIPT OF RECORD.

In the District Court of the United States for the Eastern District of North Carolina.

At a District Court of the United States for the Eastern District of North Carolina begun and held at the court house, in the city of Raleigh, on the first Monday of March, being the sixth day of the same month, in the year of our Lord one thousand nine hundred and twenty-two.

Present: The Honorable Henry G. Connor, Judge of the District Court for the Eastern District of North Carolina.

Among others were the following proceedings, to-wit:

In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

2 *Bill of Complaint.*

Filed Sept. 26, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

AUGUSTUS D. WATTS, Individually and as Commissioner of Revenue of North Carolina; Benjamin R. Lacy, State Treasurer of North Carolina; Baxter Durham, State Auditor of North Carolina; James S. Manning, Attorney General of North Carolina; Frank Nash, Assistant Attorney General of North Carolina; James H. Harris, Sheriff of Beaufort County, North Carolina; J. W. Cooper, Sheriff of Bertie County, North Carolina, et als.

To the Honorable H. G. Connor, Judge of the District Court of the United States for the Eastern District of North Carolina:

The Atlantic Coast Line Railroad Company, a corporation duly organized, created and existing under and by virtue of the laws of the State of Virginia, and a citizen and resident of said state, brings this

its Bill of Complaint against Augustus D. Watts, individually
3 and as Commissioner of Revenue of North Carolina, a citizen of the State of North Carolina whose individual residence is in the County of Iredell in said State and in the Western District thereof and whose official residence as Commissioner of Revenue of North Carolina is at the City of Raleigh in said State and in the Eastern District thereof, and Benjamin R. Lacy, Treasurer of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern District of said State and Baxter Durham, Auditor of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern District of said State and James S. Manning, Attorney General of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern District of said State and Frank Nash, Assistant Attorney General of the State of North Carolina, a citizen of the State of North Carolina, whose individual residence is in the town of Hillsboro in said State and in the Western District thereof, and whose official residence as Assistant Attorney General of North Carolina is at the City — Raleigh in said State and in the Eastern District thereof.

James H. Harris, Sheriff of Beaufort County, North Carolina,
J. W. Cooper, Sheriff of Bertie County, North Carolina,
F. L. Lewis, Sheriff of Brunswick County, North Carolina,
J. O. Ammons, Sheriff of Columbus County, North Carolina,
J. D. Williams, Sheriff of Craven County, North Carolina,
N. H. McGeachey, Sheriff of Cumberland County, North Carolina,
C. M. Ingram, Sheriff of Duplin County, North Carolina,
J. W. Thomas, Sheriff of Edgecombe County, North Carolina,
C. M. Lawrence, Sheriff of Gates County, North Carolina,
4 J. A. House, Sheriff of Halifax County, North Carolina,
J. W. McArtin, Sheriff of Harnett County, North Carolina,
B. Schull, Sheriff of Hertford County, North Carolina,
W. J. Massey, Sheriff of Johnston County, North Carolina,
J. R. Westbrook, Sheriff of Jones County, North Carolina,
L. C. Russer, Sheriff of Lee County, North Carolina,
A. W. Taylor, Sheriff of Lenoir County, North Carolina,
H. T. Roberson, Sheriff of Martin County, North Carolina,
J. L. Cornwell, Sheriff of Nash County, North Carolina,
George C. Jackson, Sheriff of New Hanover County, North Carolina,
H. L. Joyner, Sheriff of Northampton County, North Carolina,
J. R. Gurganas, Sheriff of Onslow County, North Carolina,
R. T. Murphy, Sheriff of Pender County, North Carolina,
E. R. Dudley, Sheriff of Pitt County, North Carolina,
P. H. Lewis, Sheriff of Robeson County, North Carolina,
N. A. Williams, Sheriff of Sampson County, North Carolina,
W. D. McLaurin, Sheriff of Scotland County, North Carolina,
J. E. Reed, Sheriff of Washington County, North Carolina.
5 W. D. Grant, Sheriff of Wayne County, North Carolina,
B. E. Howard, Sheriff of Wilson County, North Carolina,

citizens and residents of the State of North Carolina, and of the respective counties in said State named above, and in the Eastern District thereof,

W. S. Braswell, Sheriff of Anson County, North Carolina, a citizen and resident of said State of North Carolina and of the County of Anson and of the Western District thereof,

O. H. Britton, Tax Collector of the Town of Ahoskie, in the County of Hertford, North Carolina,

George J. Moore, Tax Collector of the Town of Atkinson, in the County of Pender, North Carolina,

W. H. Modlin, Tax Collector of the Town of Aulander, in the County of Bertie, North Carolina,

K. L. Davis, Tax Collector of the Town of Autryville, in the County of Sampson, North Carolina,

S. A. Whitehurst, Tax Collector of the Town of Ayden, in the County of Pitt, North Carolina,

J. J. Hathaway, Tax Collector of the Town of Battleboro, in the Counties of Nash and Edgecombe, North Carolina,

A. W. Perry, Tax Collector of the Town of Benson, in the County of Johnston, North Carolina,

J. S. Rollins, Tax Collector of the Town of Bethel, in the County of Pitt, North Carolina,

Sidney Bone, Tax Collector of the Town of Black Creek, in the County of Wilson, North Carolina,

W. A. Best, Tax Collector of the Town of Bolton, in the County of Columbus, North Carolina,

R. H. Byrd, Tax Collector of the Town of Burgaw, in the County of Pender, North Carolina,

J. M. Byrd, Tax Collector of the Town of Calypso, in the County of Duplin, North Carolina,

E. M. Williamson, Tax Collector of the Town of Cerro Gordo, in the County of Columbus, North Carolina,

6 O. H. McCumbie, Tax Collector of the Town of Chadbourn, in the County of Columbus, North Carolina,

L. H. Honeycutt, Tax Collector of the Town of Clinton, in the County of Sampson, North Carolina,

C. B. Bryant, Tax Collector of the Town of Conetoe, in the County of Edgecombe, North Carolina,

T. W. Pridgen, Tax Collector of the Town of Delco, in the County of Columbus, North Carolina,

U. S. Page, Tax Collector of the Town of Dunn, in the County of Harnett, North Carolina,

J. J. Farmer, Tax Collector of the Town of Elm City, in the County of Wilson, North Carolina,

J. F. Whitehead, Tax Collector of the Town of Enfield, in the County of Halifax, North Carolina,

J. D. Biggs, Tax Collector of the Town of Everett, in the County of Martin, North Carolina,

W. T. O'Berry, Tax Collector of the Town of Evergreen, in the County of Columbus, North Carolina,

R. E. Cribb, Tax Collector of the Town of Fair Bluff, in the County of Columbus, North Carolina,

R. I. Bowden, Tax Collector of the Town of Faison, in the County of Duplin, North Carolina,

D. M. Lawson, Tax Collector of the Town of Fairmont, in the County of Robeson, North Carolina,

James S. McNeill, Tax Collector of the City of Fayetteville, in the County of Cumberland, North Carolina,

R. A. Keen, Tax Collector of the Town of Four Oaks, in the County of Johnston, North Carolina,

R. F. Benton, Tax Collector of the Town of Fremont, in the County of Wayne, North Carolina,

O. C. Matthews, Tax Collector of the Town of Garland, in the County of Sampson, North Carolina,

E. C. Markham, Tax Collector of the Town of Godwin, in the County of Cumberland, North Carolina,

W. E. Mudd, Tax Collector of the Town of Gibson, in the
7 County of Scotland, North Carolina,

Joe Warrick, Tax Collector of the Town of Goldsboro, in the County of Wayne, North Carolina,

J. O. Duvall, Tax Collector of the Town of Greenville, in the County of Pitt, North Carolina,

D. M. C. Moore, Tax Collector of the Town of Grifton, in the County of Pitt, North Carolina,

W. F. Coppedge, Tax Collector of the Town of Halifax, in the County of Halifax, North Carolina,

W. D. Bell, Tax Collector of the Town of Hassell, in the County of Martin, North Carolina,

E. G. Bowden, Tax Collector of the Town of Hobgood, in the County of Halifax, North Carolina,

Alex. Bullard, Tax Collector of the Town of Hope Mills, in the County of Cumberland, North Carolina,

L. D. Sykes, Tax Collector of the Town of Jamesville, in the County of Martin, North Carolina,

C. P. Ange, Tax Collector of the Town of Jacksonville, in the County of Onslow, North Carolina,

D. A. Gore, Tax Collector of the Town of Jonesboro, in the County of Lee, North Carolina,

Thomas Asque, Tax Collector of the Town of Kelford, in the County of Bertie, North Carolina,

C. L. Lawrence, Tax Collector of the Town of Kenly, in the County of Johnston, North Carolina,

W. B. Coleman, Tax Collector of the Town of Kinston, in the County of Lenoir, North Carolina,

H. N. Wayne, Tax Collector of the Town of Lake Waccamaw, in the County of Columbus, North Carolina,

S. G. Gunter, Tax Collector of the Town of Lucama, in the County of Wilson, North Carolina,

C. M. Usher, Tax Collector of the Town of Lumber Bridge, in the County of Robeson, North Carolina,

Edward Townsend, Tax Collector of the Town of McDonald, in the County of Robeson, North Carolina,

G. H. Joyner, Tax Collector of the Town of Magnolia, in the County of Duplin, North Carolina,

8 J. M. Edwards, Tax Collector of the Town of Maxton, in the County of Robeson, North Carolina,

R. J. Henderson, Tax Collector of the Town of Maysville, in the County of Jones, North Carolina,

L. M. Austey, Tax Collector of the Town of Micro, in the County of Johnston, North Carolina,

—— ——, Tax Collector of the Town of Mount Olive, in the County of Wayne, North Carolina,

S. M. Dickens, Tax Collector of the Town of Nashville, in the County of Nash, North Carolina,

S. H. Lane, Tax Collector of the City of Newbern, in the County of Craven, North Carolina,

John Evans, Tax Collector of the Town of Oak City, in the County of Martin, North Carolina,

Roy Byrd, Tax Collector of the Town of Orrum, in the County of Robeson, North Carolina,

A. H. Perry, Tax Collector of the Town of Parkton, in the County of Robeson, North Carolina,

Louis Williams, Tax Collector of the Town of Parmele, in the County of Pitt, North Carolina,

Joe Garcia, Tax Collector of the Town of Pembroke, in the County of Robeson, North Carolina,

George D. Barnes, Tax Collector of the Town of Pikeville, in the County of Wayne, North Carolina,

E. J. Mead, Tax Collector of the Town of Plymouth, in the County of Washington, North Carolina,

R. P. Bender, Tax Collector of the Town of Pollocksville, in the County of Jones, North Carolina,

Lonnie Mooring, Tax Collector of the Town of Princeville, in the County of Edgecombe, North Carolina,

C. G. Stephens, Tax Collector of the Town of Proctorville, in the County of Robeson, North Carolina,

N. P. Mercer, Tax Collector of the Town of Red Springs, in the County of Robeson, North Carolina,

T. A. Patrick, Tax Collector of the Town of Robersonville, in the County of Martin, North Carolina,

9 W. E. Cade, Tax Collector of the Town of Rocky Mount, in the Counties of Nash and Edgecombe, North Carolina,

D. J. Bledsoe, Tax Collector of the Town of Roseboro, in the County of Sampson, North Carolina,

H. E. Harrelson, Tax Collector of the Town of Rose Hill, in the County of Duplin, North Carolina,

R. C. Hockaday, Tax Collector of the Town of Rowland, in the County of Robeson, North Carolina,

C. L. Gunter, Tax Collector of the Town of Sanford, in the County of Lee, North Carolina,

C. L. Lawrence, Tax Collector of the Town of Scotland Neck, in the County of Halifax, North Carolina,

J. H. Griffin, Tax Collector of the Town of Selma, in the County of Johnston, North Carolina,

B. H. Farmer, Tax Collector of the Town of Sharpsburg, in the County of Nash, North Carolina,

W. L. Fulter, Tax Collector of the Town of Smithfield, in the County of Johnston, North Carolina,

J. O. Proctor, Tax Collector of the Town of Spring Hope, in the County of Nash, North Carolina,

C. A. Maxwell, Tax Collector of the Town of Stedman, in the County of Cumberland, North Carolina,

H. B. Burton, Tax Collector of the Town of Tabor, in the County of Columbus, North Carolina,

J. H. Jacocks, Tax Collector of the Town of Tarboro, in the County of Edgecombe, North Carolina,

J. H. Piland, Tax Collector of the Town of Tunis, in the County of Hertford, North Carolina,

J. E. Wright, Tax Collector of the Town of Turkey, in the County of Sampson, North Carolina,

J. F. Skipper, Tax Collector of the Town of Wade, in the County of Cumberland, North Carolina,

W. D. Murray, Tax Collector of the Town of Wallace, in the County of Duplin, North Carolina,

W. H. Drawhorn, Tax Collector of the Town of Warsaw, in the County of Duplin, North Carolina,

10 J. R. Meekins, Tax Collector of the Town of Washington, in the County of Beaufort, North Carolina,

W. F. Garrish, Tax Collector of the Town of Watha, in the County of Pender, North Carolina,

J. W. Pierce, Tax Collector of the Town of Weldon, in the County of Halifax, North Carolina,

A. G. Taylor, Tax Collector of the Town of Whitakers, in the Counties of Edgecombe and Nash, North Carolina,

D. S. Hayes, Tax Collector of the Town of Whiteville, in the County of Columbus, North Carolina,

C. F. Page, Tax Collector of the Town of Williamston, in the County of Martin, North Carolina,

B. H. Dewey, Tax Collector of the City of Wilmington, in the County of New Hanover, North Carolina,

H. F. Barnes, Tax Collector of the Town of Wilson, in the County of Wilson, North Carolina,

J. L. Hobgood, Tax Collector of the Town of Winterville, in the County of Pitt, North Carolina,

W. H. Hedgepeth, Tax Collector of the Hobgood Special School District, in the County of Halifax, North Carolina,

J. W. Pierce, Tax Collector of the Weldon Graded School District, in the County of Halifax, North Carolina,

J. F. Whitehead, Tax Collector of the Enfield Graded School District, in the County of Halifax, North Carolina,

D. J. Milliken, Tax Collector of the Halifax Graded School District, in the County of Halifax, North Carolina,

J. E. Branch, Tax Collector of the Garner Brickwell School District, in the County of Halifax, North Carolina,

B. M. Wormsley, Treasurer of the Goose Nest Township Road District, in the County of Martin, North Carolina,

11 F. L. Haislip, Tax Collector of the Hamilton Township Road District, in the County of Martin, North Carolina,

B. F. Goodwin, Tax Collector of the Williamston Graded School District, in the County of Martin, North Carolina,

W. L. Reddick, Tax Collector of the Robersonville Graded School District, in the County of Martin, North Carolina,

citizens and residents of the State of North Carolina and of the Eastern District thereof,

J. B. Martin, Tax Collector of the Town of Morven, in the County of Anson, North Carolina,

S. J. Lowery, Tax Collector of the Town of McFarlan, in the County of Anson, North Carolina,

H. W. Clark, Tax Collector of the Town of Wadesboro, in the County of Anson, North Carolina,

citizens and residents of the State of North Carolina and of the Western District thereof.

And thereupon complainant complains and prays:

1. That the complainant was at all times hereinafter mentioned, and is now, a corporation duly created, organized and existing under and by virtue of the laws of the State of Virginia, and is a citizen of said state and is not a citizen of North Carolina and it did at all times hereinafter mentioned and does now operate, own, lease and control lines of railroad and other property in and through the States of Virginia, North Carolina, [and in and through the above named counties, cities and towns in the State of North Carolina,] South Carolina, Georgia, Florida and Alabama and is now and was at all such times operating said lines of railroad in interstate commerce. The total mileage of road so operated, owned, leased or controlled by the complainant as of May 1, 1921, in the State of North Carolina and elsewhere was 4,889.76 miles and the total miles of roads operated, owned, leased or controlled by complainant as of said date was distributed between mileage in the State of

12 North Carolina and outside of the State of North Carolina (by separate lines, divisions and branches) as is shown in the following statement:

Virginia	147.22
North Carolina	1,043.79
South Carolina	929.41
Georgia	725.97
Florida	1,791.62
Alabama	251.75
Total	4,889.76

The ratio or proportion which the length of the lines leased, operated or controlled in North Carolina bore to the total length of miles operated, owned, leased or controlled in the State of North Carolina and elsewhere was .21346 per cent.

2. That the defendant, Augustus D. Watts, is Commissioner of Revenue of the State of North Carolina, duly appointed by the Governor of North Carolina, and under and by virtue of Chapter 40 of the Public Laws of North Carolina of 1921, and duly qualified under the laws of said State and is a citizen of North Carolina whose individual residence is in the County of Iredell in said State and in the Western District thereof, and whose official residence as Commissioner of Revenue, is at the City of Raleigh in said State and in the Eastern District thereof; that the defendant, Benjamin R. Lacy, is the State Treasurer of the State of North Carolina, duly elected and qualified under the laws of said State and is a citizen and resident of the County of Wake in the Eastern District of said State; that the defendant, Baxter Durham, is the State Auditor of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern District of said State; that the defendant, James S. Manning, is Attorney General of the State of North Carolina and a citizen and resident of the County of Wake in the Eastern
13 District of said State; that the defendant, Frank Nash, is Assistant Attorney General of the State of North Carolina and a citizen of the State of North Carolina, whose individual residence is in the town of Hillsboro in said State and in the Western District thereof, and whose official residence as Assistant Attorney General of North Carolina is at the City of Raleigh in said State and in the Eastern District thereof, and that the other defendants, except the defendant W. S. Braswell, Sheriff of the County of Anson and the defendants J. B. Martin, S. J. Lowery and H. W. Clark, Tax Collectors of the towns of Morven, McFarlan and Wadesboro, in Anson County, respectively, are all residents of the respective cities, towns and counties hereinabove set out and are residents of the Eastern District of the State of North Carolina, and the said defendant, W. S. Braswell, Sheriff of the County of Anson and the said defendants, J. B. Martin, S. J. Lowery and H. W. Clark, Tax Collectors of the Towns of Morven, McFarlan and Wadesboro, in the said County of Anson, respectively, are citizens and residents of the Western District of North Carolina; that the said Sheriffs and Tax Collectors are severally charged with the duty of collecting the taxes levied in their respective counties, cities and towns.

3. This is a suit in equity and arises under the laws and Constitution of the United States as will hereinafter particularly appear, and the amount in controversy in this case, exclusive of interest and costs, as will be more specifically shown, exceeds the sum and value of three thousand dollars ($3,000.00). Among other things this suit is brought to redress and prevent the deprivation under color of the several statutes of North Carolina of certain rights and immunities secured to the complainant by the Constitution of the United States—that is, the right to have and enjoy its property without being deprived thereof without due process of law, and with-

out being denied the equal protection of the law, and this
14 suit involves the further question as to whether or not the special assessments sought to be made and imposed by the defendants, interfere with, burden, obstruct and regulate commerce with foreign nations and among the several states.

4. That by Chapter 164 of the Public Laws of North Carolina of 1899, ratified on or about the 6th day of March, 1899, the General Assembly of North Carolina passed an act entitled "An Act to Establish the North Carolina Corporation Commission," which said Act has from time to time been supplemented and amended, and is brought forward in the Consolidated Statutes of North Carolina, of 1919, as Chapter 21, and said Corporation Commission under said Chapter of said Consolidated Statutes of North Carolina was created the Board of State Tax Commissioners with the powers and duties prescribed by Article 4 of Chapter 131 of said Consolidated Statutes which said Consolidated Statutes have been revised and amended by the laws of North Carolina known as the Revenue and Machinery Acts of 1919, special session of 1920 and session of 1921, of the Public Laws of North Carolina, reference to all of which is herein prayed.

5. Complainant shows that the tax sections of the Constitution of North Carolina and the plan of taxation now in force in the State of North Carolina, as applicable to this complainant and other railroads in the State, are as follows:

(*a*) Section 3 of Article 5 of the Constitution of North Carolina provides in part as follows:

"Sec. 3. Taxation Shall be by Uniform Rule and ad Valorem: Exemptions.—Laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money * * * The General Assembly may also tax trades, professions, franchises and incomes." etc.

15 Section 6 provides:

"Sec. 6. Taxes Levied for Counties.—The total of the state and county tax on property shall not exceed fifteen cents on the one hundred dollars value of property, except when the county property tax is levied for a special purpose and with the special approval of the General Assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the state for the term required by article nine, section three, of the constitution: Provided, further, the state tax shall not exceed five cents on the one hundred dollars value of property."

Section 9 of Article 7 of the Constitution of North Carolina provides as follows:

"All taxes levied by any county, city, town or township shall be uniform and ad valorem upon all property in the same except property exempted by this Constitution."

(*b*) Prior to the first day of May, 1921, the Commissioners selected from time to time under authority of law to establish the North Carolina State Tax Commission constituted a Board of Appraisers and Assessors for Railroad companies and other companies exercising the right of eminent domain.

(*c*) Under an Act of the Legislature of North Carolina, ratified on the 8th day of March, 1921, Public Laws of North Carolina, Session 1921, page 288, the powers and duties of the State Tax Commission were transferred and imposed upon the Commissioner of Revenue.

(*d*) Under Sections 62, 62*a*, and 63 of the Act of the Legislature of North Carolina, approved March 8, 1921, page 225 of the Public Laws of North Carolina, Session 1921, at page 263 (hereinafter referred to as the Machinery Act), it is provided that railroad companies must file certain returns.

(*e*) Under Section 64 of said Machinery Act, it was made the duty of the Commissioner of Revenue, at such dates as real estate is required to be assessed for taxation, to first determine the value of the tangible property of each division or branch of such railroad, of rolling stock, and all other physical or tangible property.

Section 64 then provides:

"This value shall be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions to be considered as in the case of private property."

Section 64 also provides:

"They" (referring to the State Tax Commission for which there was thereafter substituted the Commissioner of Revenue as set forth above) "shall then assess the value of the franchise, which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property."

Section 64 also provides:

"The aggregate value of the physical or tangible property and the franchise as thus determined, shall be the true value of the property for the purpose of an ad valorem taxation, and shall be appor-

tioned in the same proportion that the length of such road in
17 each county bears to the entire length of such division or branch thereof; and the State Tax Commission shall certify on or before the first day of September, to the chairman of the county commissioners and the mayor of each city or incorporated town the amount apportioned to his county, city or town."

(*f*) Section 65 of the Machinery Act provides for a proportional valuation of interstate railroads in the proportion which the length of the main line of road in the State of North Carolina bears to the whole length of such main line of road, and to determine the value in the State of North Carolina accordingly. Said section contained the following proviso:

"Provided, the Commission shall, in valuing the fixed property in this state, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this state, and any other factor which would give a greater or less value per mile of road in this state than the average value for the entire system. On or after the first Monday in July, the said Commission shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said Commission may, if they see fit, require all argument and communications to be presented in writing."

(*g*) Section 82 (6½) of an Act entitled "An Act to Raise Revenue" approved March 8, 1921, page 147, of the Public Laws of North Carolina, Session 1921, at page 193, provides as follows:

"Railroads.—Every railroad company doing business in this state shall annually on or before the thirtieth day of July make and return to the State Tax Commission in such form and upon
18 such blanks as shall be furnished by the State Tax Commission, and giving such information as the State Tax Commission shall require for the purpose of carrying out the provisions of this section and upon which report the State Tax Commission shall ascertain and certify to the State Auditor the value upon which the amount of taxes which shall be paid by any such railroad company as a franchise or privilege tax shall be calculated. The basis upon which such calculation shall be made by the State Tax Commission and the extent to which every such railroad company is exercising its franchise in this state shall be found to be the value of the property, tangible and intangible, of each such railroad company in the state assessed for the year in which such report is made for ad valorem taxes. The franchise tax of each such railroad company for the privilege of exercising its franchise in this state shall be one-tenth of one per cent (0.1%) of the value so ascertained by the State Tax Commission, and such tax shall be due and payable on or before the fifteenth day of October in each year. If any such company shall fail to make report provided for, it shall be the duty of the State Tax Commission to make an appropriation from the

reports and records on file in that department of the amount of taxes due under this section, and certify same to the State Auditor and Treasurer for collection. No county, city, or town shall be allowed to collect any taxes under this section."

(*h*) Section 82 (3½) of the said Act provides as follows:

"That where a report required to be made under the provisions of this section to the State Tax Commission by any domestic corporation shows capital stock issued and outstanding by any such company to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which report is made, or the report of any foreign corporation shows the proportion of the capital stock of such foreign corporation apportionable to this State under rules laid down in section 82 of this act to be less than one-half of the assessed value for taxation of all the property of such company in this state for the year in which such report is made, the measure of the extent to which the corporate franchise of any such corporation is being used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation in this State."

The State of North Carolina levies also an income tax as provided in the income tax act of 1921, which levies upon the net income for the calendar year of 1921 taxes as set forth in said act, page 203 of the Public Laws of North Carolina, Session 1921, amounting to three per cent (3%) on the net income of this corporation. Said Act, in Section 202, provides for the assessment of the income tax against railroads as follows:

"Sec. 202. Railroads and Public Service Corporations.—The basis of ascertaining the net income of every corporation engaged in the business of operating a steam or electric railroad, express service, telephone or telegraph business, or other form of public service when such company is required to keep records according to the standard classification of accounting of the Interstate Commerce Commission shall be the 'net operating income' of such corporations as shown by their records kept in accordance with that standard classification of accounts, when their business is wholly within this state, and when their business is in part within and in part without the state their net income within this state shall be ascertained by taking their gross 'operating revenues' within this state, including in their gross 'operating revenues' within this state the equal mileage proportion within this state of their interstate business and deducting from their gross 'operating revenues' the proportionate average of 'operating expenses,' or 'operating ratio,' for their whole business, as shown by the Interstate Commerce Commission standard classification of accounts. From the net operating income thus ascertained shall be deducted uncollectible revenue,' and taxes paid in this state for the income year, other than income taxes and war profits and excess profits taxes, and the balance shall be deemed to be their net income taxable under this act."

6. Complainant further shows that the said State Tax Commission assessed and certified the ad valorem assessment of the properties of the complainant in the State of North Carolina, tangible and intangible, for the year 1919 at the sum of $34,645,345, of which the tangible property was assessed at $15,891,000 and the intangible property at $18,754,345, upon which sum this complainant paid taxes to the State of North Carolina and the several counties and cities through which its line of railroad runs.

7. That in and by Chapter 84 of the Public Laws of North Carolina, of 1919, entitled "An Act to Provide for the Listing and Valuing of all Property, Real, Personal and Mixed at its Real Money Value," ratified the 11th day of March, 1919, the Legislature of North Carolina, provided for a revaluation of all real and per-
21 sonal property in North Carolina which said re-valuation was made under the direction of the State Tax Commission and certified down in the year 1920, as the value of real and personal property in the state of North Carolina at its true value in money, under which said valuation, the tangible and intangible property of this complainant in the State of North Carolina was fixed by the said State Tax Commission and certified down to the various cities and towns in said state as being the sum of $50,867,800, of which the tangible property was assessed at $39,620,930, and the intangible property at $11,246,870.

8 That complainant protested the said valuation and assessment so made by the said State Tax Commission for the year 1920, and paid under protest the taxes assessed thereon to the said State and to the several counties, cities and towns through which its railroad runs.

9. That in and by an Act of the General Assembly of North Carolina, ratified the 8th day of March, 1921, entitled "An Act to Transfer the Powers and Duties of the State Tax Commission to the State Department of Revenue" being Chapter 40 of the Public Laws of 1921, from and after the first day of May, 1921, all the powers and duties imposed by any act of law, including the Revenue and Machinery Acts, enacted by the General Assembly of 1921, upon the State Tax Commission, were transferred to and imposed upon a department to be known as the State Department of Revenue, to be administered by the Commissioner of Revenue, which office was created by said Act and the appointment to which provided to be filled by the Governor, by and with the advice and consent of the Senate, and if such an appointment should be made while the Senate was not in session, confirmation of such appointment was provided in said Act to be made at the next session of the Senate. The term of office of the said Commissioner of Revenue was fixed at
22 four years from and after the first day of May, 1921, and under the said Act the Governor of North Carolina appointed the defendant Augustus D. Watts to be Commissioner of Revenue, and the said defendant duly qualified and is now and has been since May 1, 1921, Commissioner of Revenue.

10. Among other things it was provided in Chapter 38 of the Public Laws of 1921, as follows:

"Sec. 28 (*a*). County Boards to Review Valuation of Real Estate.—"The board of county commissioners and the county board of appraisers and review, heretofore appointed under chapter eighty-four of the Public Laws of one thousand nine hundred and nineteen (any vacancy which may have occurred to be filled by appointment of the board of county commissioners), shall meet jointly in each county on the first Tuesday after the first Monday in April, one thousand nine hundred and twenty-one, as a county board of review, to determine if the value of real property as heretofore appraised and assessed in the county as a whole is in excess of the fair value of such property at the time of meeting of such board. The chairman of the board of county commissioners shall be the chairman of the county board of review as thus constituted, and the clerk of the board of county commissioners shall be secretary of the said board. The said board shall make proper inquiry and investigation into the existing values of real property as compared with the assessed and appraised values thereof in the several cities, towns and townships of the county, and if it shall find that the assessed value of such property is in excess of the actual value, it shall find the average percentage of such excess in the county as a whole, or in the
23 several cities, towns and townships, and shall report its findings so made to the State Tax Commission not later than the twentieth day of April, one thousand nine hundred and twenty-one. The values so reported shall be the values at which the property shall be assessed for taxation unless and until the same have been changed and revised by the State Tax Commission and certified to the board of county commissioners of such county, which shall be done not later than the first day of July one thousand nine hundred and twenty-one.

"Sec. 28 (*b*) Specific Complaints.—The board of county commissioners of the several counties shall have and exercise authority to hear and determine specific complaints of over-valuation or under valuation of any particular tracts of real property, and after the general equalization order provided for in the preceding subsection has been made, any person who owns property subject to taxation and who finds that said property stands assessed for taxation, after such equalization order has been made at an amount in excess of the actual value of such property on the first day of May, one thousand nine hundred and twenty-one, may have the right to have the same reassessed and reappraised by the said board by filing with the clerk of the board of county commissioners some time during the month of May, one thousand nine hundred and twenty-one an application in form and substance as follows:

To the Board of County Commissioners, —— County:

I hereby make application for the reassessment of the real
24 property hereinafter described, for the reason that the said property is now assessed in excess of its actual value on the

first day of May, one thousand nine hundred and twenty-one and do hereby certify that in my best judgment the actual value of said property on that date was as it is stated herein to be:

Location, ——.
Condition, ——.
Acreage, ——.
Assessed Value, ——.
Actual Value May 1, 1921, ——.

—— ——,
(Signature of Complainant.)

Any citizen of the county may file complaint of the under valuation of any real property in the county, or the board may of its own motion revise the valuation of any property that it finds to be valued at more or less than the actual value of such property on the first day of May, one thousand nine hundred and twenty-one.

The county board of commissioners may appoint the county auditor or any resident freeholder of the county, who has general knowledge of the value of the real property of the county, to investigate any and all complaints filed under the provisions of this section, and make report and recommendations to the said board as to the true value in money of such properties. The county board of commissioners shall thereupon approve or revise such recommendations, and shall, not later than the fifteenth day of July, one thousand nine hundred and twenty-one, make report to the State Tax Commission of the increases and reductions in the valuation of specific properties made under authority of this section.

"Sec. 28 (*c*) If the board of county commissioners of any county, at their regular monthly meeting on the first Monday in
25 April one thousand nine hundred and twenty-one, shall be of the opinion that the valuation of real estate in such county is so unequal as between the owners of real property in such county as to require a more general revision of assessments than is practicable to be made under the provisions of subsections (*a*) and (*b*) of this section, or the value of real property as heretofore appraised in such county as a whole is in excess of the present actual value of such property, it may by resolution so find and order that such revision be made. In the event such order is made, it shall be in lieu of the remedies provided in subsections (*a*) and (*b*) of this section, and the board of county commissioners shall appoint a board of review, composed of three resident freeholders, who have general knowledge of the value of real estate in such county, and such board of review may appoint such number of assistants as in their judgment is necessary to complete such revision, not later than the first day of July, one thousand nine hundred and twenty-one. The said board shall take and subscribe to an oath to perform their duties according to the provisions of this act according to the best of their ability, and shall give notice by public advertisement that the board, or one of its members or assistants, will attend at least one day in each township, and as long as shall be necessary to hear evidence as to the true value of the real property therein, and of any property over-valued or under-

valued; and the said board shall proceed as speedily as possible to hear and determine what the present true value thereof is, and to make such general review and revision of the assessed value of real property in such county as it finds is necessary to be made, to
26 the end that the same may be fairly and equally assessed, at its present actual value in money. A complete abstract of such revised assessment, by townships, giving average value per acre, and value of town lots, and the value as a whole, shall be made to the board of county commissioners of such county and to the State Tax Commission, not later than the fifteenth day of July, one thousand nine hundred and twenty-one, and shall be subject to the authority of the State Tax Commission as a State Board of Equalization, so as to preserve a proper equalized value of real property in the several counties. The board of county commissioners shall fix the expense that may be incurred under this section, such expense to be borne by the county.

"Sec. 28 (*d*) The report of the board of county commissioners, made pursuant to section twenty-eight (*b*), and the abstracts as reported by the board of review under section twenty-eight (*c*), shall be the basis for the assessment of taxes, unless and until the same are changed by the State Tax Commission on or before the first day of September, one thousand nine hundred and twenty-one and the said State Tax Commission shall, on or before the first day of September, one thousand nine hundred and twenty-one certify down to the board of county commissioners of the several counties, its findings and conclusions upon said report and abstracts.

"Sec. 28 (*e*) In any proceeding under this Act the county board of review or county board of commissioners, or any of their representatives, shall have access to the questionnaires filed by the owners of the real property in the county under chapter eighty-four
27 of the Public Laws of one thousand nine hundred and nineteen, the tax rolls for the several townships, and any other records pertaining thereto.

It shall be the duty of the State Tax Commission to exercise the authority of supervision herein imposed, to the end that, as nearly as may be, property of all classes in all counties of the state may be fairly and equally valued in accordance with the requirements of the Constitution and the provisions of this act, and if in any case in doubt as to whether changes in valuation in any county should be approved, it shall have the authority, and it shall be its duty, to make or cause to be made, such investigation as it may deem necessary to determine the facts and reach a just conclusion.

The words "actual value," as used in the several subdivisions of this section, shall be held to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and deemed to mean what the property would bring at cash sale when sold in such manner as such properties are usually sold.

"Sec. 28 (*f*). Any taxpayer in any county may appeal, within thirty days, to the State Tax Commission, from any findings by the Board of county commissioners.

"Sec. 28 (*g*). Any taxpayer owning property assessed originally by the State Tax Commission may make application to the State Tax Commission for a review of the assessment of its property in the same manner herein provided for complaint by property owners before the county boards, and the State Tax Commission may hear and determine such complaints."

11. That acting in accordance with the authority imposed upon them by Section 28*a* of said Chapter 38 of the Public Laws
28 of 1921 the Boards of County Commissioners and County Boards of Appraisers and Review of the counties hereinbelow set out, appointed under Chapter 84 of the Public Laws of 1919, met jointly as provided in said statute, and within the time appointed therein, as the County Boards of Review, to determine if the value of real property, as theretofore appraised and assessed under said Chapter 84 of the Public Laws of 1919 in said counties, as a whole, was in excess of the fair value of such property at the time of the meeting of such boards, and after making inquiry and investigation into the excess of the assessed and appraised valuation of real property, in the several cities, towns and townships in said counties, as is provided in said section 28*a*, found that the average percentage of excess in the said counties as a whole was as is in the next paragraph herein set out, and reported their various findings to the State Tax Commission as provided in that section, and the said State Tax Commission did not change or revise the said valuation, and, in accordance with the said section, the said percentage values so reported became the values at which the real property in said counties was assessed for taxation for the year 1921, the same being the percentage reduction in the value of such real property which had theretofore been assessed for taxation in the year 1920 under said Chapter 84 of the Public Laws of 1919.

12. The reductions made in said assessments and valuations of real property in the several counties, and in the several cities, towns and townships therein through which complainant's line of railroad runs, for the year 1921, under the valuation and assessment of the year 1920, are as follows:

Anson	20%, and 10% in towns.
Beaufort	25%
Bertie	25%
Cumberland	10%
Edgecombe	50%

29 and in the Town of Rocky Mount 20% and in the other cities and towns in that county 25%

Gates	10 %
Halifax	40 %
Hertford	33⅓%
Johnston	33⅓%
Jones	30 %
Lee	33⅓%
Lenoir	25 %
Martin	33⅓%
Nash	50 %

and in the Town of Rocky Mount 20% and in the other cities and towns in that county 25%.

Northampton	33⅓%
Onslow	20 %
Pender	25 %
Sampson	25 %
Washington	25 %
Wayne	33⅓%

and in cities and towns 16⅔%.

Wilson	33⅓%

and in cities and towns of Wilson and Elm City 10%.

13. Complainant further shows that in accordance with Section 28c of said Chapter 38 of the Public Laws of 1921, a re-valuation and new assessment was ordered and made in the counties of Craven, counties and upon such re-valuation the real property in those counties was reduced by the following percentages under the assessment of the year 1920, to-wit:

Duplin, Pitt, Robeson and Scotland of the real property in those

Craven	27%
Duplin	14%
Pitt	15%
Robeson	39%
Scotland	1.1%

And upon the certification of such re-valuation to the said State Tax Commission and Board of Equalization no change was made
30 by the said State Tax Commission and said Board of Equalization and thereupon said revaluation so made by the said

County Board of Review became the value of the real property in those counties for the year 1921 and assessments thereon were and are made in accordance therewith.

14. Your complainant shows that the Board of County Commissioners and County Board of Appraisers and Review of Brunswick, Columbus, Harnett and New Hanover Counties made no reduction and certified no reduction in those counties to the State Tax Commission.

15. Complainant further shows that the assessment and valuation of the real property in the counties in North Carolina through which this railroad runs, for the year 1920, as shown by the report of the State Tax Commission on Revaluation, to the Governor of North Carolina, dated August 10, 1920, was $707,216,601. This assessment and valuation has been horizontally reduced by percentages as authorized by Section 28*a* of the said Machinery Act of 1921 and by the revaluations as authorized by section 28*c* of the said Act, to $522,558,657, or an average reduction for the year 1921 of 26.11%, while the average tax rate levied in the said counties has increased 104%, as shown by the table below. Complainant is informed and believes that in addition to the said increases in said county taxes there have been large increases in special taxes, levied for schools, road districts and other purposes in the various counties, cities and towns, but this complainant has been unable to obtain all of these figures. The assessments for 1920 and 1921, and the tax levies for these counties are hereinbelow set out:

31 County.	Assessment real property 1920.	Tax levy 1920.	Percentages of reduction authorized by State.	Valuation 1921 on reduced percentages.	Tax levy 1921.	Percentages of increase in county tax levy.
Anson	$13,384,811	.40	20%	$10,707,849	.98	145%
Beaufort	29,207,006	.59	25%	21,905,255	1.00	70%
Bertie	13,958,782	.47	25%	10,469,087	.85	81%
Brunswick	7,953,027	.47	None	7,953,027	.85	81%
Columbus	15,789,229	.52	None	15,789,229	.80	54%
Craven	28,745,458	.56	27% Revaluation Appx.	21,000,000	.90	61%
Cumberland	20,522,039	.61	10%	18,469,836	.79	30%
Duplin	24,211,549	.41	14% Revaluation	20,748,928	.65	58%
Edgecombe	34,955,056	.257	50%	17,477,528	.602	134%
Gates	5,631,242	.46	10%	5,068,118	.64	40%
Halifax	35,636,872	.76	40%	21,382,124	1.35	77%
Harnett	20,823,234	.34	None	20,823,234	.70	105%
Hertford	10,747,168	.39	33⅓%	7,164,779	.95	143%
Johnston	42,030,148	.26	33⅓%	28,020,099	.82	215%
Jones	8,447,840	.32	30%	5,913,488	.90	181%
Lee	8,706,469	.46	33⅓%	5,804,313	.80	74%
Lenoir	33,857,010	.44	25%	25,392,757	1.04	136%
Martin	15,613,311	.40½	33⅓%	10,408,874	.83½	107%
Nash	36,300,096	.44	50%	18,150,048	.92	109%
New Hanover	37,517,377	.60	None	37,517,377	1.20	100%
Northampton	12,367,534	.51	33⅓%	8,245,023	.68	33⅓%
Onslow	10,807,997	.44	20%	8,646,397	.80	82%
Pender	8,492,798	.50	25%	6,369,599	.92	84%
Pitt	44,254,598	.43	15% Revaluation	37,647,932	.75	74%

Robeson	48,024,939	.34	39% Revaluation	29,283,084	.70	106%
Sampson	22,717,990	.37	25%	17,038,492	.90	143%
Scotland	21,319,716	.1542	.01% Revaluation	21,077,571	.48	211%
Wayne	47,323,132	.32	33⅓%	31,548,755	.87	172%
Washington	7,468,873	.56	25%	5,601,654	Rate not fixed	
Wilson	40,401,300	.46	33⅓%	26,934,200	.96	108%
	$707,216,601			$522,558,657		
	522,558,657					
	$184,657,944					

Reduction in Valuations 26.11%.

Average percentage of increase in rate 104%.

32 16. This complainant further shows that for the year 1921 the Commissioner of Revenue fixed the valuation of the ad valorem assessment of the property of the complainant in North Carolina at the sum of $51,163,717.00, of which $39,916,847.00 is tangible and $11,246,870.00 is intangible property, and said assessment and valuation being $295,917.00 in excess of said assessment and valuation for the year 1920, and has certified the said valuation and assessment down to the several counties, cities and towns and to the State Auditor and State Treasurer of North Carolina in accordance with the law of North Carolina.

17. In assessing and valuing the property of your complainant for the year 1921, the Commissioner of Revenue declined to give to your complainant the benefit of any horizontal percentage reductions upon the real property of your complainant which was allowed to other persons and corporations, and your complainant protested against said assessment and requested a hearing. A hearing was had before the said Commissioner of Revenue August 16, 1921, and facts were produced before him showing that such assessment so made by him was unfair, was discriminatory, and would be taking the property of your complainant without due process of law, and denying to it the equal protection of the law and was not uniform, and was not made in accordance with said Chapter 38 of the Public Laws of 1921, and should be reduced in order to equalize the value of the complainant's property with that of other persons and corporations assessed for taxes for the year 1921 under the laws of North Carolina.

18. Complaint further shows, as an instance of the injustice, unfairness and discrimination practiced by the said Commissioner of Revenue in assessing the property of this complainant for the year 1921, that in the re-valuation of the real property in Nash and Edgecombe Counties, all of the real property in those counties, ex-
33 cept the property lying within the incorporated towns was horizontally reduced 50% from the valuation of 1920, while none of the property of this complainant and the other railroads in Nash and Edgecombe Counties was reduced, except the real property in those counties assessed by the local assessors. The result is that while other taxpayers generally will pay no more taxes this year, due to the increase in rate and decrease in assessment, this complainant will, due to the increase in rate of taxation and paying upon the same assessment as last year, pay an increase of taxes this year to Nash County of approximately 109% and to Edgecombe of approximately 134%.

19. Complainant further shows that section 62 of the said Machinery Act of 1921 provides:

"* * * that all machine and repair shops, general office buildings storehouses and contents located outside of the right of way and also real and personal property other than the property as returned above to the State Tax Commission, shall be listed for the purposes

of taxation by the principal officers or agents of such companies with the list takers of the county where the real and personal property may be situated in the manner provided by law for the listing and valuation of real and personal property. A list of such property shall be filed by such company with the State Tax Commission * * *."

In making returns to the Commissioner of Revenue (formerly the State Tax Commission), such property is shown under the heading "property outside of the right of way listed with the local list-takers," the value of which for the year 1920, belonging to complainant, was assessed at $1,677,178, and notwithstanding the fact that reductions in assessments upon this property for 1921, were made by the local assessors to the amount of $78,601.00, the Commissioner of
34 Revenue refused to allow complainant this reduction in the final assessment made by him of the aggregate valuation of complainant's property.

20. Complainant further shows that Section 62*a* provides:

"Sec. 62*a*. Railroad Companies Required to File Maps, etc.— * * * Every such company shall also report the value of any and all buildings and structures within the limits of any such city or town, whether on or off its right of way, and the commission shall find the value of all such real estate, buildings and structures, and shall certify to such city or town the value of same, in addition to the value per mile of so much of its main line as may be located within such city or town, for ad valorem taxation."

The returns to said Commissioner of Revenue made by the railroads under the laws of North Carolina, show an itemized statement of valuation of all such structures owned by the complainant, whether in the cities and towns or outside of the cities and towns, and also a description and valuation of the lands outside of the right of way, upon which the Commissioner of Revenue refused to allow the percentage reduction given by the various Boards of Review in the counties in which they are situated.

As an instance, complainant shows that the City of Rocky Mount lies partly within the County of Nash and partly within the County of Edgecombe, and the main line track of this complainant running through the said City of Rocky Mount is the dividing line between the two counties. This complainant has large properties, such as shops, tracks, sidings, transfer stations, freight and passenger stations in Nash and Edgecombe Counties. A part of this property lies within the City of Rocky Mount and a part without. That portion of the real property within the said city of Rocky Mount of this complainant, assessed by the local assessors, was reduced 20% from the valuation of last year, while that lying outside of the
35 City of Rocky Mount assessed by the said local assessors was reduced 50% from the assessment of 1920, while that portion of the real property lying within the City of Rocky Mount and without the City of Rocky Mount, assessed by the Commissioner of Reve-

nue was not reduced in any respect, and this discrimination is a denial to complainant of the equal protection of the law and takes its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and of Section 3 of Article 5 and Section 9 of Article 7 of the constitution of North Carolina which are especially pleaded and relied upon.

21. In addition to the failure of said Commissioner of Revenue to give to your complainant the *the* reduction which, under the law of North Carolina as above set forth, it is entitled to, the Commissioner of Revenue has certified down to the various counties, cities and towns an amount, exceeding by $295,917.00, what would be the correct calculation even if this complainant was not entitled to any reduction at all, and even if the basis adopted by the said Commissioner of Revenue for the valuation of the complainant's property was correct, in that he has certified down an amount of local property which is in excess of the true amount as assessed by the local assessors in the several counties, cities and towns.

22. In arriving at the valuation and assessment for the year 1921, your complainant avers that the total assessment and valuation as found by the said Commissioner of Revenue for the year 1921 should be reduced by giving to the complainant the same average percentage reduction upon its real property as was made in the various counties throughout which this complainant's railroad runs, and which was given to all persons and corporations within those said counties, and which average reduction is 26.11%, as shown in paragraph 14 hereof,
and your complainant further avers that the failure and re-
36 fusal of the said Commissioner of Revenue to give to this complainant such reduction and the failure to reduce the total assessment by $78,601 the amount of decrease allowed by the local assessors and the addition erroneously of the sum of $297,917 to the assessment of 1920, and the enforcement of such assessment takes complainant's property without due process of law, and denies to complainant the equal protection of the law, in violation of the Fourteenth Amendment to the Constitution of the United States, and denies to it the protection it is entitled to under Section 3 of Article 5 and Section 9 of Article 7 of the Constitution of North Carolina, which provide for uniform taxation.

23. Complainant further shows that the said Commissioner of Revenue has refused to make any attempt whatsoever to equalize the value of complainant's property with the property of other persons and corporations and that under the laws of North Carolina there is no appeal from the assessment and valuation fixed by the said Commissioner of Revenue and the Attorney General of North Carolina has advised the said Commissioner of Revenue to this effect in a written opinion. Complainant avers that the said Machinery Act of North Carolina provides an appeal to the State Board of Equalization of the said State of North Carolina to all persons and corporations, except railroads, and the failure and refusal of the laws of North Carolina to provide an appeal to the railroads and to give

an appeal to all other persons and corporations is a denial of the equal protection of the laws and of the uniformity clause of the Constitution of North Carolina.

24. Complainant further avers that all of said acts hereinabove recited on the part of the said Commissioner of Revenue are discriminatory and in violation of Section 3 of Article 5 and Section 9 of Article 7 of the Constitution of North Carolina and of the
37 Fourteenth Amendment to the Constitution of the United States, which are especially pleaded and relied upon.

25. Complainant is advised, and on information and belief states, that the tax rates either have been or will be materially increased in the said counties in order that the amount of needed revenue may be raised. The actual result of this status is that the assessment of complainant's property remains practically the same, whereas the asessment of other property is reduced. The causes which brought about a decrease in value of real estate in the counties in which the reduction was made apply with even greater force to complainant's property. The decrease of value has not been confined to real property of individuals but applies alike to real property of complainant. Complainant avers that the reduction being horizontal, shows that it was not based upon any reduced value of any particular piece of real property or upon facts individual to any individual piece of real property, but is, and was intended to be, a general scheme of reduction due to general conditions, applicable alike to all and should, therefore, be applied alike to all, and Complainant should derive the benefit thereof, and its failure to receive the benefit thereof is contrary to Section 3 of Article 5, and Section 9 of Article 7 of the North Carolina Constitution and to the Fourteenth Amendment to the Constitution of the United States, in that it denies to the complainant the equal protection of the law and takes its property without due process of law.

26. Complainant further avers that Section 65 of the said Machinery Act of 1921 provides as follows:

"Sec. 65. Railroads.—When any railroad has part of its road in this state and part thereof in any other State, the said commission shall ascertain the value of railroad track, rolling stock and all other property liable to assessment by the State Tax Commission of such company as provided in the next preceding section, and di-
38 vide it in the proportion to the length such main line of road in this State bears to the whole length of such main line of road, and determine the value in this State accordingly: Provided, the Commission shall, in valuing the fixed property in this State, give due consideration to the character of roadbed and fixed equipment, number of miles of double track, the amount of gross and net earnings per mile of road in this State, and any other factor which would give a greater or less value per mile of road in this State than the average value for the entire system. On or after the first Mon-

day in July, the said commission shall give a hearing to all the companies interested, touching the valuation and assessment of their property. The said Commission may, if they see fit, require all argument and communications to be presented in writing."

27. Complainant further avers that the method employed by the State Tax Commission in arriving at the valuation of complainant's property for the year 1920 in North Carolina was illegal, and resulted in the over assessment of complainant's property for taxation under the laws of North Carolina, and that the Commissioner of Revenue unjustly and illegally refused to reduce said assessment for the year 1921, and, complainant avers that it endeavored to ascertain from the said State Tax Commission the method employed by it in arriving at said assessment but was unable to obtain said information from the State Commissioner of Revenue, but complainant is informed and believes and upon such information and belief alleges:

That in endeavoring to compute the value of railroad property for the year 1920, the State Tax Commission took, or attempted to take, the average earnings of railroads for the years 1915 to 1919 inclusive, which they found or endeavored to find by deduct-
39 ing from the revenue allocated to North Carolina, the average annual taxes paid in said State and the average annual operating expenses allocated to the said State. Complainant further shows that the determination of the net income for the State of North Carolina cannot be arrived at justly and fairly by such a method, because allocation of operating expenses to any branch, or division of a railroad or to any State is made arbitrarily and not with mathematical accuracy. Complainant shows that the allocation of operating expenses to branches or sub-divisions is made regularly, but only for comparative purposes, and is recognized not only to be mathematically incorrect but does not truly represent the said expenses, and, further, that such allocation is made to States because of the State laws and regulations requiring it. Complainant avers that under the existing accounting methods of allocating expenses to North Carolina, operating expenses so allocated are understated and net income overstated in this. For instance: that only expenses accruing within that State are so allocated, while traffic passing through that state is assembled or originates at, and is destined to terminal points without North Carolina, at which large operating expenses accrue, only a part of which is apportioned to this State, while the revenue therefrom is apportioned to North Carolina, and, as an illustration, complainant shows that on a train load of citrus fruit or vegetables originating in Florida destined to New York there are first assembling charges, and then terminal expenses at Jacksonville, Florida, and at Potomac Yards, Virginia, and various other expenses in connection with icing, originating on the line of road, no part of which is charged to the North Carolina expenses, while the North Carolina revenue is apportioned with full credit of the operating revenue.

That on a shipment originating in North Carolina, destined to southwestern points, going via Savannah, Georgia, and Montgomery,

Alabama, there are terminal expenses at Montgomery, Ala-
40 bama, no part of which are chargeable against the revenue in North Carolina, and likewise, on shipment originating in North Carolina to New York via Pinners Point, Va., there are heavy terminal expenses at Pinners Point, Va., where complainant has invested large sums of money in terminal facilities, docks, barges, tugs, etc., while the full mileage proportion of the entire revenue is credited to North Carolina.

28. Complainant further shows that this method of allocating earnings from the property to the State of North Carolina under the North Carolina statute is illegal and works to a disadvantage of the complainant for the purpose of ascertaining the net income in North Carolina for that:

(*a*) Traffic which moves through North Carolina greatly exceeds the traffic originating in or destined to North Carolina, and, therefore, North Carolina escapes terminal expenses on a large volume of the total traffic.

(*b*) The terminal expenses on traffic originating in or destined to North Carolina are very much less than those without the State at points like Pinners Point, Va., Charleston, S. C., Jacksonville, Fla., Montgomery, Ala., Brunswick, Ga., Savannah, Ga., Richmond, Va., and Tampa and Port Tampa, Fla. That under such plan the result is a showing that the ratio of operating expenses to operating revenues in North Carolina is less than those of the entire system which plaintiff avers is not true.

(*c*) It owns various other property outside of the State of North Carolina not used in railroad business, which, although not used in this company's business in the State of North Carolina, yet under this scheme of taxation is taxed by the taxing authorities of the State, for the reason that there are no deductions made by the said Commissioner of Revenue of such items before allocation to North Carolina.

And the complainant shows that the operating revenues and operating expenses for its entire system are kept accurately
41 and its accounting is done under the rules and regulations prescribed by the Interstate Commerce Commission, and is checked by that body and also by certified public accountants, and that if the value of its property is to be determined by a capitalization of its net income the capitalization of such net income for the entire system should be used in order to determine the value of its entire property, but that this should be apportioned to North Carolina and the other States through which it runs, upon a fair and reasonable method, making just and reasonable allowance for operating expenses and for terminals and other like properties outside of said State.

29. Complainant avers that in arriving at the valuation of its property for the year 1920 the North Carolina Tax Commission did not

assess and value the property of this complainant according to the law of North Carolina, and shows that under neither the net earnings plan nor under the stocks and bonds plan the said Commission have arrived at the valuation which it placed upon complainant's property and complainant avers that said valuation, and especially the intangible valuation so placed upon its property, was made upon an arbitrary basis and without justification. The said Commission assessed the tangible property, year 1920, at a valuation of $39,620,930, or 149.33 per cent. more than assessed by them in 1919; they arrived at this value by taking the Investment in Road and Equipment of the entire system and distributing to North Carolina on a basis of mileage owned, making no deductions on account of the large and costly terminals at Pinners Point, Virginia; Charleston, South Carolina; Savannah and Brunswick, Georgia; Jacksonville, Tampa and Port Tampa, Florida, etc., causing a greater excess value per mile of line outside of this State as compared with those inside.

The intangible property was assessed at $11,246,870, which
42 was not assessed in accordance with Sections 64 and 65 of the Machinery Act of 1921, making the aggregate valuation $50,867,800. Complainant further shows that its operating revenues and expenses for its entire system for the years 1916 to 1920, inclusive, were as follows:

Entire System.

Year to Dec. 31.	Gross operating revenues.	Operating expenses and taxes.	Net operating revenue.
1920	$74,121,955.70	$72,285,528.83	$1,836,426.87
1919	63,559,015.27	56,009,911.01	7,549,104.26
1918	56,992,329.24	45,158,302.38	11,834,026.86
1917	44,063,331.25	32,037,994.91	12,025,336.34
1916	37,322,085.42	25,904,015.30	11,418,070.12
Total for 5 years	$276,058,716.88	$231,395,752.43	$44,662,964.45
Average	$55,211,743.37	$46,279,150.48	$8,932,592.89

and if its said earnings were capitalized on the average net operating revenue for said period at the rates of 6%, 7% and 8% and prorated to North Carolina on a mileage basis and on a gross earnings basis the results would be as shown below, any one of which results, upon either basis, is far below the assessment and valuation fixed by the State Tax Commission and the Commissioner of Revenue:

Allocation to North Carolina.

Rate.	Capitalized system values.	Operated mileage basis.	Gross-earnings basis.	1921 assessment com. of rev.
6%	$148,876,548.17	$32,279,413.17	$39,054,784.88	$51,163,715.00
7%	127,608,469.85	27,668,068.43	33,475,529.89	
8%	111,657,411.12	24,209,559.88	28,291,088.65	

Complainant submits below a statement of its operating results for the State of North Carolina for five years with the average net operat-

ing revenue, less taxes, and the average, which is $2,503,811.94, if capitalized at 6%, 7% and 8% would give the result shown
43 below, all of which are greatly below the valuation fixed by the State Commissioner of Revenue:

Capitalization of Earnings—State of North Carolina.

Year.	Gross operating revenue.	Operating expenses and taxes.	Net operating revenue.
1920	$18,623,234.36	$17,827,740.58	$795,493.78
1919	17,376,471.19	15,288,496.14	2,087,975.05
1918	14,816,308.86	11,611,468.63	3,204,840.23
1917	11,584,617.49	8,314,909.01	3,269,708.48
1916	10,217,647.65	7,056,605.49	3,161,042.16

Average Net Operating Revenue, less Taxes	$2,503,811.94
Capitalized at 6%	41,730,199.00
Capitalized at 7%	35,768,742.00
Capitalized at 8%	31,297,649.00

Complainant, therefore, avers that the said assessment of the Commissioner of Revenue amounts to a tax on its property beyond the jurisdiction of the State of North Carolina, and is a burden upon interstate commerce and in violation of the commerce clause of the Constitution of the United States.

30. Complainant is informed and believes, and on such information and belief alleges that the State Tax Commission and Commissioner of Revenue in capitalizing used a percentage of 6%. At the time said assessments were made complainant, and other like Railroad Companies enjoying the highest credit, were paying not less than 7½% and in some instances 8% when railroad securities earning 6% were not worth par on the market.

Complainant's lines of railroad run through six states and the legal rates of interest in those states are as follows:

Virginia	6%
North Carolina	6%
South Carolina	7%
44 Georgia	7%
Florida	8%
Alabama	8%

and complainant, therefore, avers that the rate at which the average net income should be capitalized is not less than 8%, which rate does not allow anything for the hazard of such an investment.

31. Complainant shows that its net operating revenue, less taxes in the State of North Carolina, in 1916, was $3,161,042.16, while in 1920, it fell to the sum of $795,493.78 or a decrease of $2,365,548.38, or 74.81 per cent, while the ratio of operating expenses and taxes to operating revenue increased from 69.41 per cent in 1916 to 97.36 per cent in 1920, and notwithstanding the fact that the Commissioner of Revenue had these facts and figures before him, he

refused to give any consideration to said figures, while on the other hand he allowed various reductions to other persons and corporations on their reduced earning power.

32. Complainant shows that the statute in North Carolina, above referred to, required the Commissioner of Revenue in arriving at the value in North Carolina to consider the value placed upon the property by the public, as evidenced by the value of capital stock, bonds, certificates of indebtedness and other obligations, the value of which is based upon the earning capacity of the property. Complainant further shows that its capitalization, par value, on May 1, 1921, the date of valuation was as follows

Stock and Bonds.

Capital Stock	$68,782,900.00
Mortgage Bonds	102,124,000 00
Income Bonds	15,000.00
Miscellaneous Obligations	4,580,555.00
Trust Bonds	6,629,500.00
Notes	6,000,000.00
	$188,131,955.00
45 Miles of Road Owned	4,750.85
Average Value per mile	$39,599.64
Miles Owned in North Carolina	1,039.16
Value in North Carolina on Mileage Basis	$41,150,361.90

and that even if the value to be considered was the par value of complainant's stocks, bonds, certificates of indebtedness and other obligations outstanding the valuation arrived at upon this basis is $41,150,361.90.

But complainant further avers that the average market value of its stocks, bonds certificates of indebtedness and other obligations outstanding for the year 1920 and to August 31, 1921, were as follows:

(Here follow tables, marked pages 46 and 47.)

FIGURES TAKEN FROM PUBLICATION BY COMMER

	Closing Price April 30, 1921 Bid	Asked	
A. C. L. R. R. Co.:			
Common Stock	82½	(Sale)	
Preferred Stock	No sales or quotations		
4% Certificates of Indebtedness	Last record:	1916:	High
Ten Year Secured 7% Notes	99½	(Sale)	
Convertible Debenture 4% Bonds	64	65½	
General Unified "A" 4½% Bonds	75	(Sale)	
General Unified "B" 4% Bonds	No record of transactions.		
Unified 4% Bonds	Last record:	Sales in 1914	
First Consolidated 4% Bonds	76¾	(Sale)	
Equipment Trust "B" 4½% Bonds (Yield Basis)	7%	6.50%	
Equipment Trust No. 4 6% Notes	No transactions since issu		
Equipment Trust No. 4-A 6% Notes	No transactions since issu		
Equipment Trust "D" 6½% Cert. (Yield Basis)	7.40%	6.40%	
A. C. L. R. R. of S. C. 1st 4% Bonds	74	75½	
Alabama Midland Ry. 1st 5% Bonds	90½	93	
Brunswick & Western R. R. 1st 4% Bonds	74	83	
Brunswick & Western R. R. Income 5% Bonds	No record of transactions.		
Charleston & Savannah Ry. 1st 7% Bonds	102	----------	10
Florida Sou. R. R. 1st 4% Bonds	70	73	
Norfolk & Carolina R. R. 1st 5% Bonds	88	----------	
Norfolk & Carolina R. R. 2nd 5% Bonds	Last record:	Sale in 1915	a
Northeastern R. R. Con. 6% Bonds	98	----------	
Petersburg R. R. "A" 5% Bonds	92	----------	
Petersburg R. R. "B" 6% Bonds	97	98½	
Richmond & Petersburg R. R. Con. 4½% Bonds	80	----------	
Savannah, Fla. & West. Ry. 1st 6% Bonds	101½	----------	
Savannah, Fla. & West. Ry. 1st 5% Bonds	92	----------	
Sanford & St. Petersburg R. R. 1st 4% Bonds	Available records since 1910 transactions.		
Wilmington & New Bern R. R. 1st 4% Bonds	Last record:	Sale in 1912	a
Wilmington & Weldon R. R. Gen. 4% Bonds	80	----------	
Wilmington & Weldon R. R. Gen. 5% Bonds	91	----------	

A—Asked.
B—Bid.

Closing Price May 3, 1920 Bid	Asked	1920 High	1920 Low	To August 31, 1921 High	1921 Low
86	(Sale)	104¼	82	89¼	77
gh 92½: Low 90¼.					
		108¼	95¼	104	99
55	60	72-A	55-B	72-A	63-B
70	(Sale)	78¼	68	79	72¼
s.					
14 at 93 and 92					
72¼	(Sale)	80	69¼	81	73¼
7½%	7%	5.50-A	7.75-B	6.75-A	6.90-B
sue.					
sue.					
				6.40%	6.52%
77	83	79-A	70-B	78-A	73-B
91¼	96	92¼	90¼	95	91
77	83	79¼	78	79	78¼
s.					
109½	113	Last record:	Sale:	1915 at 129½.	
60	70	80-A	60-B	80-A	67-B
83	90	97-A	83-B	92-A	83-B
5 at 104½.					
97			95-B		100-B
83	90	96-A	83-B	95-A	89-B
97	100	107-A	97-B	98½-A	97-B
70			70-B		76-B
98		100¾	98¼		99-B
92½		91	91	89	89
10 do not show any					
2 at 95.					
70		85-A	70-B		75-B
88		96-A	80-B	92-A	88-B

		Total Par Value 1920	Average Market Value 1920	Total Market Value 1920	Average Market Value 1921	Total Market Value 1921
Capital Stock		$ 68,782,900	94	$ 64,655,926	88	$ 57,089,807
		Total Par-Value Outstanding				
Sanford & St. Petersburg	1st Mtg	$ 275,000	79*	$ 217,250	79*	$ 217,250
Petersburg R. R. Co.—Class "A"	1st Mtg	868,000	89	772,520	92	798,560
Petersburg R. R. Co.—Class "B"	2nd Mtg	800,000	102	816,000	98	784,000
Alabama Midland Ry. Co	1st Mtg	2,800,000	91	2,548,000	93	2,604,000
Northeastern R. R. Co	Con Mtg	657,000	95	624,150	100	657,000
Savannah, Fla. & Western R. R. Co	1st Mtg	4,056,000	99	4,015,440	99	4,015,440
Savannah, Fla. & Western R. R. Co	1st Mtg	2,444,000	91	2,224,040	89	2,175,160
Wilmington & Weldon R. R. Co	Gen 1st Mtg	3,062,000	89	2,725,180	90	2,755,800
Wilmington & Weldon R. R. Co	Gen 1st Mtg	988,000	78	781,640	75	709,500
Charleston & Savannah R. R. Co	1st Mtg	1,500,000	106*	1,590,000	106*	1,590,000
Brunswick & Western Ry. Co	1st Mtg	1,407,000	78	1,097,460	79	1,111,530
Norfolk & Carolina R. R. Co	1st Mtg	1,314,000	90	1,182,600	88	1,156,320
Richmond & Petersburg R. R. Co	Con Mtg	300,000	70	210,000	76	228,000
Florida Southern R. R. Co	1st Mtg	2,418,000	70	1,692,600	73	1,765,140
Norfolk & Carolina R. R. Co	2nd Mtg	400,000	85*	340,000	85*	340,000
Wilmington & New Bern R. R. Co	1st Mtg	105,000	78*	82,680	78*	82,680
Atlantic Coast Line R. R. Co. of S. C.	Gen 1st Mtg	5,000,000	74	3,734,780	76	3,835,720
Atlantic Coast Line R. R. Co	1st Con Mtg	50,383,000	75	38,147,250	77½	39,291,667
Atlantic Coast Line R. R. Co	Gen Uni Mtg "A"	22,769,000	73½	16,678,292	75½	17,247,517
Atlantic Coast Line R. R. Co	Gen Uni Mtg "B"	100,000	77*	77,000	77*	77,000
		$ 102,124,000		$ 79,506,882		$ 81,436,294
INCOME BONDS:						
Brunswick & Western R. R. Co		$ 15,000	92½*	$ 13,875	92*	$ 13,800
MISCELLANEOUS OBLIGATIONS:						
A. C. L. R. R. Co.—Convert-Debenture		$ 4,444,855	63	$ 2,800,258	62½	$ 2,778,094
A. C. L. R. R. Co.—New Certificate Indebtedness		135,100	63	85,113	62½	84,457
W. & W. R. R. Co.—New Certificate Indebtedness		600	106*	636	106*	636
		$ 4,580,555		$ 2,886,007		$ 2,863,107
TRUST BONDS:						
Funded Debt—Equipment Obligations		$ 6,629,500	99*	$ 6,563,205	99*	$ 6,563,205
NOTES:						
A. C. L. R. R. Co.—10 Year Secured Notes		$ 6,000,000	99½	$ 5,970,000	101½	$ 6,090,000
		$ 188,131,955		$ 159,595,895		$ 154,056,508
RECAPITULATION						
Capital Stock		$ 68,782,900		$ 64,655,926		$ 57,089,807
Mortgage Bonds		102,124,000		79,506,882		81,436,294
Income Bonds		15,000		13,875		13,800
Miscellaneous Obligations		4,580,555		2,886,007		2,863,107
Trust Bonds		6,629,500		6,563,205		6,563,205
Notes		6,000,000		5,970,000		6,090,000
		$ 188,131,955		$ 159,595,895		$ 154,056,508
NOTE. * No quotation given.						
Miles owned	4,750.85					
Average Value Per Mile				$ 33,593.12		$ 32,427.09
Miles owned in North Carolina	1,039.16					
Value in North Carolina						

48 and complainant avers that the value of said property based upon the average price of said stocks, bonds, certificates of indebtedness and other obligations for the year 1920, would be $159,595,895 and the value of that portion of the property in North Carolina upon a mileage basis is $34,908,626 and that for the year 1921, the value of said property based upon said average price of said stocks and bonds for 1921 is $154,056,203 and that the value of that part of complainant's property in North Carolina upon a mileage basis is $33,696,925.

Complainant therefore avers that under no one of these tests, that is the said capitalization of earnings or the par or market value of stocks and bonds, is the true value of its property arrived at in the assessment herein complained of.

33. Complainant further shows that the so-called franchise tax is not a franchise tax measured by the value of the use of the property, but is in truth and in fact an ad valorem tax based upon the value of the property, and as the said so-called franchise tax is levied only upon railroads, on the assessment of tangible and intangible property for ad valorem purposes, above set forth, the result is that this ad valorem tax is not levied equally upon all the property holders in this State, and is, therefore, contrary to Section 3 of Article 5 of the Constitution of North Carolina, and, by reason of the enforcement thereof, complainant is deprived of the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States. As this so-called franchise tax is 1-10 of 1% of the assessed value of the property, tangible and intangible, for ad valorem purposes, the fixing by the said Commissioner of Revenue of a sum greatly in excess of the true value for ad valorem purposes at which it should be assessed is doubly iniquitous and damaging, because the excessive assessment is also used for the illegal so-called franchise tax. Under this scheme of taxation in North Carolina, complainant's property being assessed at $51,163,717, complainant is required to pay to all counties, cities and towns
49 the assessed rate for that county, city or town just as other property holders, but in addition to this is also required to pay to the state under the guise of a franchise tax 1-10 of 1% upon the same ad valorem value.

34. Complainant further avers that the said so-called franchise tax is not uniform and not levied equally upon corporations, because by Section 82 (3) of the said Revenue Act of 1921, on corporations generally, a tax of one-tenth of one per cent is levied upon the subscribed or issued and outstanding capital stock of such corporations, whereas, by Section 82 (6½) of the Revenue Act of 1921, a tax of one-tenth of the one per cent is levied upon the tangible and intangible value of railroad companies, as ascertained by the Commissioner of Revenue for ad valorem purposes; and, your complainant avers that the unequal assessment as between railroad corporations and other corporations as a basis for the imposition of the tax of one-tenth of one per cent, violates Section 3 of Article 5 of the Constitution of North Carolina and denies to complainant the

equal protection of the law and deprives it of its property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States, and constitutes a burden upon interstate commerce in violation of the interstate commerce clause of the Constitution of the United States.

35. Complainant further shows that even if the said so-called franchise tax of 1-10 of 1% is not illegal and void, as a franchise tax, but should be decided by the court to be a valid tax, nevertheless complainant was required to pay for the year 1920 and did pay under protest $50,867.80, being 1-10 of 1% upon the entire assessment and valuation, and will be required to do the same for the year 1921, whereas under the provisions of section 82 (3½) of the Revenue Act hereinbefore referred to, complainant should only be required to pay upon one half of such value for the reason
50 that the capital stock of the complainant allocated to North Carolina amounts to less than one half of the valuation of complainant's property in North Carolina. The said State Tax Commission of 1920 refused, as likewise did the Auditor and State Treasurer, to charge complainant and collect on the basis of one half of its valuation, and will refuse to do so for the year 1921, although such provision is made for other corporations in like situations, thus depriving the complainant of the equal protection of the laws and in violation of the Fourteenth Amendment to the Constitution of the United States, and a violation of the uniformity clause of Section 3 Article 5 of the Constitution of North Carolina. And, complainant prays the Court, if the said so-called franchise tax should be held valid to decree what amount this complainant should pay as such franchise tax; and further, prays that if the Court shall decree that the said tax is illegal and void that the Court will make a decree in this cause, demanding the said State Treasurer to refund to this complainant the amount of said franchise tax paid for 1920 and if the Court shall decree the so-called franchise tax is valid, it will make a decree herein requiring the said State Treasurer to refund to this complainant one half of the amount of said so-called franchise tax paid by this complainant under protest to the said State Treasurer for 1920.

36. Complainant further shows that the assessment of its property in excess of its true value results in erroneous importation of value into the State of North Carolina, and by as much as such erroneous value is imported into North Carolina and taxed, the tax amounts to a direct burden upon interstate commerce and contravenes the Constitution of the United States.

37. Thus this complainant avers that the State of North Carolina has taxed the property of this complainant at its actual value as a going concern by the assessment on which the local taxation is based on the whole property, tangible and intangible, and to this
51 the State adds a so-called franchise tax of 1-10 of 1% on the same assessment, and will on this company's business for the year 1921 assess, and during the year 1922 collect, an additional tax characterized as an income tax of three per cent on net operating

revenue, including revenue derived from interstate commerce. Complainant avers that this system of pyramiding taxes and the entire scheme of taxation amounts to a regulation of commerce between the states, because necessarily a tax of one tenth of one per cent upon the tangible and intangible property of this complainant and a further tax of three per cent upon its net Revenue, including revenue from interstate commerce, are taxes upon interstate commerce, the property both tangible and intangible having already been taxed at its full value. This scheme of taxation, considered as a whole, necessarily levies a tax and burden on the interstate commerce of Complainant and violates Section 8 of Article 1 of the Constitution of the United States.

38. Complainant will owe to the various counties and municipalities herein mentioned, the legally enacted tax upon whatever may be found to be the legal assessment for taxes upon its property in the State of North Carolina; and, inasmuch as complainant realizes the necessity to the counties and municipalities named herein of collecting the legally assessed taxes for the purpose of carrying on the public business, and, as this complainant has no desire to embarrass the said counties and municipalities in the collection of such revenue as they may be entitled to, it expresses a willingness to pay to such counties and municipalities such an amount as this court may determine and upon such plan as the court may devise for the protection of the complainant against the final payment of an excessive and illegal assessment.

Complainant further expresses a willingness to pay to the State of North Carolina the said tax of one-tenth on one per cent, pending the determination by this Court of the legality of the said
52 assessment and tax, if some plan can be devised whereby, in the event complainant's contentions herein are sustained, said tax may be refunded to this complainant.

39. Complainant avers that as the said assessment has been certified by the Commissioner of Revenue to the State Auditor and to the several counties and municipalities in the State of North Carolina in which complainant's lines are subject to tax, it has, therefore, joined as parties defendant hereto the State Auditor and the State Treasurer, who under the law respectively charge for collection and receive payment of the said franchise tax and the sheriff for each county in which complainant has property, upon whom the law places the duty of collecting the county taxes levied upon said illegal assessment and the city or town tax collector of each incorporated city or town in which complainant has property, upon each of whom the law imposes the duty of collecting the city or town taxes on said illegal assessment and the tax collectors for special graded or other school districts and township road districts upon whom the law imposes the duty of collecting special taxes levied for school and road purposes, in said districts; and the Attorney General and Assistant Attorney General of North Carolina, whose duty it is to enforce the laws of the State of North Carolina and the penalties provided by

such laws, and unless said officers are joined in this suit, complainant will be required to institute a multiplicity of suits, all of which will involve the same and the one question of the validity of the said assessment made by the Commissioner of Revenue and the validity of the said so-called franchise tax and the said so-called income tax; as the assessment is made as an entirety by the Commissioner of Revenue and by him apportioned to the several counties and municipalities of this State, the authorities of these counties and municipalities are not empowered to change the same, but are required by law to assess against this complainant on an apportionment of the said invalid assessment so certified to said Counties or Municipalities, the tax imposed for such counties and municipalities and levied on other property, and unless the tax collecting officers of the several counties and municipalities and the said State officials, defendants herein, are restrained, they will proceed to collect said illegal taxes upon said illegal assessment, which taxes become due on the first Monday in October, 1921. Complainant further shows that under the law of North Carolina the taxes so assessed in behalf of the State, Counties, Towns, Cities and Special Districts, if not paid, will become a first lien upon the property of complainant in North Carolina and will be a cloud upon the title to its property, and if not paid as assessed, and within the time limited by said law of North Carolina, the penalties as provided by law will attach and its property will be sold for the taxes, to the irreparable damage of complainant, for which it has no adequate remedy at law.

53

Prayer.

Wherefore, and for as much as Complainant is remediless in the premises, according to the common law, and remediable only in equity, and that complainant may not be subjected to a multiplicity of suits, which would otherwise develop, and may not suffer irreparable injury and damage, and may not have its property taken from it without due process of law, may not be denied the equal protection of the laws and may carry on its interstate commerce business untrammeled by the burdens imposed by the laws of North Carolina, may be permitted to pursue and carry on its business without unlawful hindrance and destruction, and that the railroad operated by complainant in the State of North Carolina as aforesaid, and its property, may not be subjected to illegal liens, complainant prays for a writ of subpœna to issue against the defendants and each and every one of them named and described as aforesaid to appear and full and true answer make to this bill of complaint, and that the said defendant, Augustus D. Watts, Commissioner of Revenue, state in his answer the method whereby he reached the so-called final assessment, not under oath, answer under oath being hereby waived, and the said defendants and each and every one of them be enjoined by final decree and meanwhile by preliminary injunction as follows, to wit:

54

That Baxter Durham, Auditor of the State of North Carolina, be enjoined and restrained from charging complainant for collection

and that Benjamin R. Lacy, as State Treasurer, be enjoined from charging and collecting from complainant the so-called franchise or privilege tax on the assessment herein complained of, until the final order of this Court.

That each of the defendant Sheriffs aforesaid of the respective counties be enjoined and restrained from collecting or taking any steps to collect from complainant upon the proportion of said assessment apportioned to and certified by the Commissioner of Revenue as being apportioned to his county, any and all taxes levied thereon for County, Township or other taxing district purposes, until the final order of this Court.

That each of the defendant city or incorporated town tax collectors of the respective cities and towns aforesaid, be enjoined and restrained from collecting or taking any steps to collect from complainant upon the proportion of the said assessment apportioned to and certified down by the Commissioner of Revenue to the respective Mayors of said cities and towns as being apportioned to his said city and town any and all taxes levied thereon for the city, town or other municipality purpose until the final order of this Court.

That each of the defendants above named, tax collectors for special taxes, be restrained and enjoined from collecting or taking any steps to collect from the complainant upon the proportion of the said assessment apportioned to their respective special tax districts, any taxes levied thereon for said tax districts or for any purposes
55 therein, until the final order of this Court.

That on final hearing the Commissioner of Revenue be enjoined and commanded to cancel the illegal assessment aforesaid and to withdraw from the several chairmen of the County Commissioners and Commissioners of each City or incorporated town to which certificate of a proportion thereof has been made; that the said assessment be declared to be illegal and void, and that the statutes of North Carolina mentioned above, providing for said illegal taxes, be declared to be in violation of the constitutional rights of the complainant, as set forth in the bill, and null and void, and for all such other, further, general and special relief as in equity it may be entitled to.

This is the first application for injunction in this cause.

P. A. WILLCOX,
THOS. W. DAVIS,
Solicitors for Complainant.

GEO. B. ELLIOTT,
SKINNER & WHEDBEE,
Of Counsel.

STATE OF NORTH CAROLINA,
County of New Hanover:

R. D. Cronly being duly sworn, deposes and says that complainant, Atlantic Coast Line Railroad Company, is a corporation and that he is one of its officers, to-wit, Assistant Secretary; that he has read the foregoing bill of complaint and knows the contents thereof; that

the same is true of his own knowledge, except as to those matters therein set forth on information and belief and that as to
56 those matters he believes it to be true.

R. D. CRONLY. [L. S.]

Sworn to and subscribed to before me, This 24th day of September, 1921.

[Seal of State of North Carolina, County of New Hanover, B. B. Reynolds, Notary Public.]

B. B. REYNOLDS,
Notary Public.

My Commission Expires January 31st, 1922.

57 *Subpœna.*

UNITED STATES OF AMERICA,
Eastern District of North Carolina:

District Court, Fourth Circuit, at Raleigh.

The United States of America to Augustus D. Watts, Commissioner of Revenue of N. C., Raleigh, N. C.; Benjamin R. Lacy, State Treasurer of N. C., Raleigh, N. C.; Baxter Durhan, State Auditor of N. C., Raleigh, N. C.:

We command you, and every of you, that you appear before the Judges of our District Court of the United States of America, for the Eastern District of North Carolina, at the office of the Clerk of said Court, in the City of Raleigh, in said District, on the 17th day of October, next, to answer the Bill of Complaint of the Atlantic Coast Line Railroad Company, a citizen and resident of the State of Virginia, filed in the Clerk's office of said Court, in said City of Raleigh, then and there to receive and abide by such Judgment and Decree as shall then or thereafter be made, upon pain of Judgment being pronounced against you by default.

To the Marshall of the Eastern District of North Carolina to execute.

Witness, the Hon. Wm. Howard Taft, Chief Justice of the Supreme Court of the United States, at Raleigh, in said District, the 27th day of Sept., 1921, and in the 146th year of the Independence of the United States.

Issued the 27th day of Sept., 1921.

S. A. ASHE,
Clerk U. S. District Court.

The within-named defendants are notified that unless they enter their appearance in the Clerk's office of the District Court at Raleigh and file their answer, or other defense, on or before the 20th day

after service hereof, excluding the day of service, the bill filed herein will be taken as confessed and a decree entered accordingly.

S. A. ASHE,
Clerk U. S. District Court.

58 *Marshal's Return on Subpœna.*

Received at Raleigh, 9/27, 1921. Executed at Raleigh, 9/27, 1921 by serving the within Subpœna and leaving copy with A. D. Watts, B. R. Lacy, Baxter Durham.

GEO. H. BELLAMY,
U. S. Marshal,
Per B. H. MEADOWS,
Dep.

Marshal's Fee, $6.00.
Marshal's Cost, —.

I certify that the within is entered and filed this day.
Sep. 29, 1921.
S. A. ASHE,
Clerk.

59 *Subpœna.*

UNITED STATES OF AMERICA,
Eastern District of North Carolina:

District Court, Fourth Circuit, at Raleigh.

The United States of America to James S. Manning, Attorney General of N. C., Raleigh, N. C.; Frank Nash, Assistant Attorney General of N. C., Raleigh, N. C.:

We command you, and every of you, that you appear before the Judges of our District Court of the United States of America, for the Eastern District of North Carolina, at the office of the Clerk of said Court, in the City of Raleigh, in said District, on the 17th day of October, next, to answer the bill of complaint of the Atlantic Coast Line Railroad Company, a citizen and resident of the State of Virginia filed in the Clerk's office of said Court, in said City of Raleigh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of Judgment being pronounced against you by default.

To the Marshall of the Eastern District of North Carolina to Execute.

Witness, the Hon. Wm. Howard Taft, Chief Justice of the Supreme Court of the United States, at Raleigh, in said District, the 27th day of Sept., 1921, and in the 146th year of the Independence of the United States.

Issued the 27th day of Sept., 1921.

S. A. ASHE,
Clerk U. S. District Court.

The within-named defendants are notified that unless they enter their appearance in the Clerk's office of the District Court at Raleigh and file their answer, or other defense, on or before the 20th day after service hereof, excluding the day of service, the bill filed herein will be taken as confessed and a decree entered accordingly.

S. A. ASHE,
Clerk U. S. District Court.

60 *Marshal's Return on Subpœna.*

Received at Raleigh, 9/27-1921. Executed at Raleigh, 9/27-1921, by serving the within Subpœna and leaving copy with Jas. S. Manning, Frank Nash.

GEO. H. BELLAMY,
U. S. Marshal,
By B. H. MEADOWS,
Dep.

Marshal's Fee, $4.00.
Marshal's Cost, $—.

I certify that the within is entered and filed this day.
Sep. 29, 1921.
S. A. ASHE, *Clerk.*

61 *Agreement for Service of Subpœna.*

Filed Oct. 3, 1921.

State of North Carolina,

Department of Attorney General,

Raleigh.

James S. Manning, Attorney General.

Frank Nash, Assistant Attorney General.

October 3, 1921.

Hon. S. A. Ashe, Clerk Federal Court,
Raleigh, North Carolina.

DEAR SIR:

Confirming my conversation with you over the phone, counsel for the State and other defendants in Atlantic Coast Line Railway Company vs. Watts, et als., consent that mailing copies to the various sheriffs and tax collectors shall be a sufficient service, and instructed me further to communicate this fact to Mr. P. A. Willcox, General Counsel of the A. C. L. R. R. Co., Florence, S. C.

Yours very truly,
(S.) JAMES S. MANNING.

62 *Clerk's Notation on Subpœna.*

In accordance with the foregoing letter, the subpœna was served upon all of the sheriffs and tax collectors, parties defendant in this suit, by mailing copies thereof by registered mail, addressed to each of the said sheriffs and tax collectors.

S. A. ASHE,
Clerk.

63 *Application for Interlocutory Injunction.*

Filed Sept. 27, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

Comes the above-named plaintiff and shows the Court:

That it has instituted in this Court by bill of complaint an action against A. D. Watts, as Commissioner of Revenue of the State of North Carolina, and other defendants as shown in said bill which is now referred to and made a part of this application, the object and purpose of the action being to secure from this Honorable Court an order enjoining preliminarily and perpetually the defendants, who are tax assessing, collecting, and enforcing officers of the State of North Carolina and its municipal subdivisions, from collecting or instituting proceedings to collect State, county, municipal, or other taxes levied upon or based upon an illegal overassessment of plaintiff's property, made and certified to them by the Revenue Commissioner of North Carolina, which assessment is contrary to the Constitution and laws of North Carolina and the Constitution of the United States. The bill alleges and sets forth the grounds of unconstitutionality of the assessment and of the statutes of North Carolina under which said invalid assessment was made and under which the illegal taxes will be collected by the defendants named in said bill unless restrained by this Honorable Court, all of which is more fully alleged, set out and explained in the bill of complaint filed herein.

Plaintiff alleges that the franchise tax levied under Section 82 of the Revenue Act of North Carolina, ratified March 8th,
64 1921, is unconstitutional and that no tax can be levied thereon under any assessment, and the action of the State's tax col-

lecting officer in the execution of said void statute is sought to be enjoined. Said tax is due and payable on or before the 15th day of October, 1921, and if not paid by December 1, 1921, a penalty of ten per cent (10%) is added to such tax.

The ad valorem taxes levied by the counties on said illegal assessment is due on the first Monday in October, and unless paid, the Sheriff may levy and sell property of this plaintiff after November 1, 1921.

The municipal and other taxes levied upon said illegal assessment will become due and the collection thereof will be undertaken prior to the determination of this cause unless the tax collecting officers are restrained.

Wherefore, application is made under Section 266 of the Judicial Code for an interlocutory injunction as prayed for in said bill, and this Court is petitioned to call to his assistance to hear and determine this application two other judges, and that the statutory notice of the hearing of this application be given the Governor and the Attorney General of the State of North Carolina and each of the defendants to the said bill, and an order issue requiring the defendants to show cause at the time and place to be fixed by this Court according to law, why said interlocutory injunction should not issue as prayed for.

This application is based upon the verified bill of complaint on file herein.

P. A. WILLCOX,
Attorney for Plaintiff.

65 *Notice of Hearing of Application for Interlocutory Injunction under Judicial Code, Section 266.*

Filed Sept. 27, 1921.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

To Honorable Cameron Morrison, Governor of the State of North Carolina; Honorable James S. Manning, Attorney General of the State of North Carolina; Honorable A. D. Watts, Revenue Commissioner of the State of North Carolina; Honorable Baxter Durham, Auditor of the State of North Carolina; Honorable Benjamin R. Lacy, Treasurer of the State of North Carolina, and to each of the defendants named in the above bill:

You, and each of you, are hereby notified that the Atlantic Coast Line Railroad Company, complainant, has filed its verified bill of

complaint in the District Court of the United States for the Eastern District of North Carolina against A. D. Watts, Revenue Commissioner, et al., praying an injunction against the named tax assessing, collecting and enforcing officers of the State of North Carolina and its municipal subdivisions from collecting or instituting proceedings to collect, State, county, municipal or other taxes levied upon or based upon the alleged illegal over-assessment of plaintiff's property for the year 1921, made and certified to by the Revenue Commissioner of the State of North Carolina, and also praying that certain tax laws of North Carolina be declared unconstitutional as will appear from the bill filed herein.

In this cause plaintiff has made application for an interlocutory injunction under Section 266 of the Judicial Code of the United States. The application for such interlocutory injunction will
66 be heard in the United States District Court, the city of Raleigh, North Carolina, on the 5th day of October, 1921, at 11 o'clock A. M. and you, and each of you, are notified to appear at said time and place and show cause, if any, why the interlocutory injunction prayed for should not be granted.

Done in open court this 26th day of September, 1921.

H. G. CONNOR,
Judge.

67 *Marshal's Return on Notice of Hearing.*

Filed Sept. 29, 1921.

Received at Raleigh 9/27-'21. Executed at Raleigh 9/27-'21 by serving the within Order and leaving copy with Hon. Cameron Morrison, J. S. Manning, A. D. Watts, Baxter Durham, B. R. Lacy.

GEO. H. BELLAMY,
U. S. Marshal,
Per B. H. MEADOWS,
Dept.

Marshal's Fees, $10.00.

I certify that the within is entered and filed this day.

Sep. 29, 1921.

S. A. ASHE,
Clerk.

68 *Order of District Judge on Application for Interlocutory Injunction.*

Filed Sept. 27, 1921.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

The application for an interlocutory injunction was presented to me this 26th day of September, 1921; and having read and considered the verified bill filed in this cause, and the application for a hearing for interlocutory injunction under Section 266 of the Judicial Code, and being advised that for the reasons set forth in said application and upon the grounds stated therein and in the verified bill, plaintiff is entitled to have its application heard under Section 266 of the Judicial Code:

It is ordered, that the application be filed and a hearing of the application for an interlocutory injunction be had and proceeded with in accordance with Section 266 of the Judicial Code as amended by Act of Congress approved March 14, 1913, and such hearing is set down for October 5, 1921, at the United States Court rooms in the city of Raleigh North Carolina, at 11 o'clock a. m.

It is further ordered, that notice of said hearing, not less than five days, shall be given to the Governor and the Attorney General of the State of North Carolina, and to each of defendants to this suit. And I hereby call to my assistance at said hearing of said application the Honorable Edmund Waddill, Jr., Circuit Judge of this Circuit, and the Honorable James E. Boyd.

This September 26th, 1921 at Wilson, North Carolina.

H. G. CONNOR,
District Judge.

69 *Agreement for Hearing at Greensboro.*

Filed Oct. 5, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

AUGUSTUS D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

The counsel for defendants, without waiving any of the rights of defendant except as to the place of hearing, hereby consent that the above cause may be heard at Greensboro, North Carolina, in the Western District of North Carolina, at the same time and before the same judges, at which and before whom the Southern Railway Company vs. the same defendants, now set down for hearing on October 6th, 1921, is heard.

JAMES S. MANNING,
LOCKE CRAIG,
Solicitors for Defendants.

70 *Motion to Dismiss.*

Filed Oct. 6, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. —.

ATLANTIC COAST LINE RAILROAD COMPANY, Plaintiff.

vs.

A. D. WATTS et al. Defendants.

Motion.

Comes now the defendants, A. D. Watts, and others named as defendants in the complaint filed in this suit, and move the Court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss this suit, because it is conceded in the com-

plaint that the plaintiff owes and is liable to pay the defendants taxes on property situated within the State of North Carolina and in the several counties, cities and towns and taxing districts named in the complaint, property of the value of $41,150,361.90 on which said property the plaintiff, as it appears in its said complaint, has not paid or tendered payment of the taxes due thereon.

(S.) JAMES S. MANNING,
Attorney General of North Carolina,
(S.) FRANK NASH,
Assistant Attorney General,
Solicitors for the Defendants.

(S.) WM. P. BYNUM,
(S.) GEORGE H. BROWN,
(S.) LOCKE CRAIG,
Of Counsel.

71 *Order Denying Motion to Dismiss.*

Filed Oct. 6, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et al.

The defendants this date moved the Court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss the suit upon the grounds stated in said motion.

Upon consideration thereof, the Court denies the motion to dismiss the suit.

It appearing to the Court that the application for a preliminary injunction has been continued by agreement of parties, which agreement has been filed in this cause, and it further appearing that by said stipulation the plaintiff agrees to pay the taxes which may come due as they come due to the counties, cities, towns, and other taxing districts of the State of North Carolina on the valuation stated in the stipulation filed herein this date;

EDMUND WADDILL, JR.,
U. S. Circuit Judge.
JAS. E. BOYD,
H. G. CONNOR,
U. S. District Judge.

72 *Stipulation of Counsel & Interlocutory Order.*

Filed Oct. 6, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue et al.

The following stipulation is entered into between counsel for plaintiff and the Attorney General of North Carolina and his associates as counsel for all defendants, for each of which defendants they have entered an appearance:

It is agreed that in order that the defendants may have sufficient time in which to prepare the defense, the application for an interlocutory injunction under Section 266 of the Judicial Code is, with the consent of Court, continued until such date as the Court may select following January 1, 1922.

The foregoing continuance being agreed upon and it appearing that before the hearing and determination of the application certain taxes will come due to the State of North Carolina and to the counties, cities, towns, and other taxing districts; Therefore it is agreed by the Attorney General of North Carolina and his associates as representing all of the defendants, that if the Atlantic Coast Line Railroad Company pays the taxes it agrees hereinafter to pay, then no further or other taxes sought to be enjoined in the bill will be demanded or collected or any action or suit of any character begun to collect or any penalty assessed for the non-payment thereof, until the further orders of the Court or pending this action.

The Atlantic Coast Line Railroad Company agrees that it will pay when due in accordance with the laws of the State of North Carolina to all counties, cities or towns, special school districts, or other special school or other special taxing district of the State, on its proper proportionate share of an agrregate ad valorem assessment against plaintiff of $34,645,345.

The Attorney General of North Carolina agrees that he will take all necessary action to have the Commissioner of Revenue certify to the several counties and taxing districts of North Carolina their proper proportion of an assessment of $34,645,345. as soon after the date hereof as may be practicable and, if possible, within such period as will enable the Railway Company to take advantage of any discount that it may be entitled to under the law.

It is agreed between the parties that the Atlantic Coast Line Rail-

road Company is not to demand a receipt in full for its 1921 taxes in consideration of the payment it makes, but is to receive a receipt for the amount of the taxes paid, and the amount of taxes so paid shall be in full of said taxes due if an assessment shall be finally fixed at a sum not in excess of $34,645,345, or such payment shall be a credit upon all taxes that may be due if the assessment of plaintiff's property for ad valorem tax purposes for the year 1921 shall be finally fixed in excess of said $34,645,345.

73 It is further agreed that if defendants desire to file an answer prior to the hearing of the application for an interlocutory injunction they shall file such answer or any motion or other pleading they desire to file by December 1, 1921, and furnish opposing counsel with copies thereof. Plaintiff shall have until December 24th, 1921, to file any motion or reply pleading and any affidavits in support of bill or motion for interlocutory injunction or in reply and furnish opposing counsel with copies thereof. Defendants shall have until January 10, 1922, to file affidavits in support of their answer or in reply and plaintiff shall have until hearing to file reply affidavits.

This stipulation to become effective and filed in this Court upon approval hereof by the Court.

At Greensboro, N. C., this 6th day of October, 1921.

THOS. W. DAVIS,
P. A. WILLCOX,
Counsel for Complainants.
JAS. S. MANNING,
Attorney General of North Carolina;
GEO. H. BROWN,
WM. P. BYNUM,
KING, SAPP & KING,
Counsel for Defendants.

Approved October 6, 1921.
EDMUND WADDILL, JR.,
U. S. Circuit Judge.
JAS. E. BOYD,
H. G. CONNOR,
U. S. District Judges.

Answer.

Filed Nov. 30th, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

ATLANTIC COAST LINE RAILROAD COMPANY

against

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et als.

74 Answer.

Come now A. D. Watts and the other defendants in the above-entitled suit and, answering the complaint filed by the plaintiff therein, say:

1. The allegations of article one are admitted, except the allegation that the plaintiff is not a citizen of the State of North Carolina, which is denied; on the contrary it is averred that the plaintiff was at all times mentioned in the complaint, and is now, a corporation duly created and existing under and by virtue of the laws of North Carolina, and by said laws was consolidated with the corporations of North Carolina and Virginia hereinafter mentioned, and is a citizen of North Carolina and of the Eastern District thereof, with its principal place of business at Wilmington in said State.

The plaintiff company was consolidated with the Wilmington and Weldon Railroad Company, Petersburg Railroad Company, and other companies chartered under laws of North Carolina, said consolidation being had under the general authority of this State as follows, Chapter 294 of the Private Laws of 1893, which act contained this proviso: "Provided, that this act shall not have the effect of ousting the jurisdiction of the courts of this State over causes of action arising within the State;" Chapter 105, Private Laws 1899, which contained these provisions:

75 Provided, further, that any and all corporations consolidated, leased or organized under the provisions of this act shall be domestic corporations of North Carolina and shall be subject to the laws and jurisdiction thereof.

"Sec. 2. That authority is hereby given to the said Wilmington and Weldon Railroad Company at any meeting of its stockholders, by a majority vote thereof, to change its name to the Atlantic Coast Line Railroad Company of North Caroilna."

At the same session of the Legislature, Chapter 77, Public Laws of 1899, the following statute was enacted:

An act to ratify the consolidation of the Petersburg Railroad Company with the Richmond and Petersburg Railroad Company, under the name of the Atlantic Coast Line Railroad Company of Virginia, and to incorporate the said Atlantic Coast Line Railroad Company of Virginia in North Carolina.

Whereas the Richmond and Petersburg Railroad Company, a corporation created by the laws of the State of Virginia, has, by virtue of the power given by an act of the General Assembly of Virginia, approved March the first, eighteen hundred and ninety-eight, acquired the ownership of all the property, rights, and franchises of the Petersburg Railroad Company, including that portion thereof which is located in this State, and the said Richmond and Petersburg Railroad Company and Petersburg Railroad Company have become consolidated under and upon the terms of said act, and such consolidated company has, by vritue of the authority given in said act changed its name to the Atlantic Coast Line Railroad Company of Virginia: now, therefore,

The General Assembly of North Carolina do enact:

Section 1. That the purchase by the said Richmond and Petersburg Railroad Company of that portion of the roadbed and other property, rights, and franchises of the Petersburg Railroad Company which are in the State of North Carolina, is hereby ratified and approved.

76 Sec. 2. That the Atlantic Coast Line Railroad Company of Virginia, a corporation created by and existing under the laws of the State of Virginia, is hereby created a body politic and corporate in the State of North Carolina under and by the aforesaid name of the Atlantic Coast Line Railroad Company of Virginia, and by such name may sue and be sued, may adopt a common seal and change the same at will, and have all the general powers and be subject to all the general restrictions granted and imposed by the laws of this State to and upon railroad companies.

Sec. 3. The said Atlantic Coast Line Railroad Company of Virginia is hereby authorized and empowered to maintain and operate the railroad which formerly belonged to the Petersburg Railroad Company in this State, and is hereby given all the rights, powers, and privileges, and made subject to all the restrictions, except the restriction as to the term to which its charter is limited, granted and imposed by the charter of the said Petersburg Railroad Company or any amendments thereto in the State of North Carolina.

Sec. 4. The powers given by this act to the Atlantic Coast Line Railroad Company of Virginia are granted upon the express condition that the property of the said Atlantic Coast Line Railroad Company of Virginia in this State shall always be liable to taxation under the Constitution and laws of this State, and that said company shall be subject to the tariffs, rules and regulations prescribed by the Board of Railroad Commissioners.

Sec. 5. This act shall be in force from and after its ratification.

The plaintiff accepted the benefits conferred upon it by the private acts above referred to, and also those contained in the above-quoted act of 1899, the railroads in North Carolina permitted by the General Assembly to consolidate with it having become under these acts a part of its system, and thus absorbed by it; and said plaintiff cannot now be heard to say that it is not bound by the restrictive provisions while it holds to the benefits conferred by those acts.

Since the enactment of the statutes above mentioned and the acceptance by the plaintiff of the benefits thereunder, it has
77 been uniformly held by the Supreme Court of North Carolina to be a corporation of this State.

The allegations of article one as to the mileage of the plaintiff in this State is admitted, except that the allegation therein that the mileage of railroad owned, operated, leased and controlled by the plaintiff in North Carolina is 1,043.79 miles is true only as to the first main lines of the plaintiff's roads in this State and does not include the mileage of second main lines and sidetracks, which, added to the mileage of the first main lines, increase the mileage of lines of railroad owned, operated, leased and controlled by the plaintiff in this State to 1,419.65 miles instead of 1,043.79 miles. Nor does this latter figure include the so-called independent lines returned and reported by the plaintiff to the Revenue Commissioner as required by law, all or a majority of the stock of which is owned by the plaintiff, thus giving it absolute control of those lines also. The mileage of these last named lines is 199.76 miles, which added to the mileage of the other lines, makes a total mileage of railroad owned, operated, leased and controlled by the plaintiff in North Carolina of 1,619.41 miles. The plaintiff has a double tracks on its main line running from Richmond, Virginia, through the State of North Carolina to Florence, South Carolina.

2. The allegations of article two are admitted, but the name of the defendant Watts is Alston D. instead of Augustus D., as alleged.

3. The allegations of article three are denied, except it is admitted that this is a suit in equity, and that the amount in controversy, exclusive of interest and costs, exceeds the sum and value of three thousand dollars.

4. The allegations of article four are admitted.

5. The allegations of article five and the subsections thereof are admitted, except as hereinafter stated.

Section 64 of the Machinery Act of 1921, referred to in subsection (*e*) of article five, did not make it the duty of the
78 Commissioner of Revenue to do the things therein stated, but made it the duty of the State Tax Commission. Subsequently, there was enacted a separate statute, ratified March 8, 1921, being Public Laws, Session 1921, page 388, whereby the powers and duties

of the State Tax Commission were transferred to and imposed upon a newly created officer to be called the Commissioner of Revenue. That statute, however, and the said Section 64 of the Machinery Act of 1921, of which it was amendatory, did not require the Commissioner of Revenue to assess the properties of railroads for taxation for the year 1921 or for any year thereafter until 1924. The State Tax Commission had made the assessment of railroad properties in North Carolina for taxation for 1920, and the said assessment had been approved by the General Assembly of North Carolina in its Extra Session of 1920, Public Laws 1920, Chapter 1, and adopted as the basis for taxation for the years 1920 to 1923, inclusive. The only power with reference to assessments of railroad properties, prior to 1924, given to the Commissioner of Revenue by the Public Laws of 1921, was the power to review the State Tax Commission's assessment of railroad properties, given by the Machinery Act of 1921, Section 28 (*g*).

The said section 65 of the Machinery Act referred to, and the proviso thereof quoted in subsection (*f*) of article three of the complaint, is the statute particularly controlling the assessment for taxation of the properties of railroads doing interstate commerce, operating both within and without the State.

Section 82 (6½%) of the Revenue Act of 1921, referred to and quoted in subsection (*g*) of article three of the complaint, was first enacted by the General Assembly in the Extra Session of 1920, Public Laws 1920, Chapter 1, Section 7 (*d*), and was carried forward without change in the said Revenue Act of 1921. The said Section 82 (6½) was a substitute for Sections 77 and 78
79 of the Revenue Act of 1919, which imposed a privilege tax on railroads for the privilege of doing intrastate commerce within North Carolina, based on gross earnings per mile within the State. This tax levied by the said Sections 77 and 78 of the Revenue Act of 1919 had existed in the laws of North Carolina for many years, in addition to ad valorem taxation. The said Section 82 (6½) substituted for the old privilege tax based on gross earnings per mile a new form of privilege or franchise tax upon all railroads, for the privilege of doing intrastate business within North Carolina, based on the total properties of each said railroads within the State as assessed under the Machinery Act for ad valorem property taxation.

It is admitted that Section 82 (3½) of the Revenue Act of 1921 is as quoted in subsection (*h*) of article five of the complaint, but it is denied that the same has any application to railroad corporations. It applies only to those corporations upon which are levied the special privilege tax based on capital stock provided for in Section 82, Subsections 1, 2, 3, 4, 5, 6, 7, 8, and 9, and has no application to the franchise or privilege tax on railroads provided for by Section 82 (6½), as hereinafter alleged.

The allegations of subsection (*h*) of article five, as to income tax against railroads, are admitted; but it is alleged that the said income tax is not only levied upon railroads, but is also levied in the same way upon all corporations doing business in North Carolina, foreign

and domestic, railroad corporations and others, equally and without discrimination.

6. The allegations of article six are admitted.

7. The allegations of article seven are admitted.

8. The allegations of article eight are admitted, but the defendants aver that the plaintiff had no legal grounds for making such protest. Its taxes paid in North Carolina in 1920 were actually less by more than one-third than those paid in by it in 1919 before the revaluation and reassessment were made, the amount of the
80 taxes paid by the plaintiff for all purposes to the State, counties, cities and towns in North Carolina being for the year 1919, $680,811.89, while for the year 1920 they were only $489,-686.79.

9. The allegations of article nine are admitted, except as to the name of Commissioner of Revenue, which is Alston D. Watts instead of Augustus D. Watts.

10. The allegations of article ten are admitted.

11. The allegations of article eleven are admitted; but the defendants aver that the action of county boards of review referred to applied only to real property in general, including real property of railroads and of the plaintiff laying off the right of way, but not to their roadbed and other property used in their daily operation.

12. Defendants are informed and believe that the allegations of article twelve are true.

13. The defendants are informed and believe that the allegations of article thirteen are true.

14. The defendants are informed and believe that the allegations of article fourteen are true.

15. The defendants are informed and believe that the allegations of article fifteen are true.

16. Answering the allegations of article sixteen, the defendants deny that the Commissioner of Revenue made any assessment of the property of the plaintiff in North Carolina for 1921. It is admitted that by an addition to the assessment of strictly railroad properties of the plaintiff made by the State Tax Commission in 1920 of values assessed by local assessors on properties of the plaintiff lying off the right of way, the total assessment of the properties of the plaintiff, both the apportionable railroad properties and the properties off the right of way locally assessed, was fixed at $51,163,717, and that that figure is in excess of the total assessment for 1920, $50,867,800, by the amount of $296,917. It is admitted that the figure of $51,163,-717 for 1921 is erroneous to the extent of $295,917, and
81 should be corrected by the deduction from it of that amount so erroneously included in the assessment of apportionable railroad properties.

This error arose from the fact that in 1920 in the returns made by the plaintiff to the State Tax Commission and upon which the State Tax Commission assessed the plaintiff's railroad property, the plaintiff itself, through confusion or misunderstanding, included certain items of property in Edgecombe and New Hanover counties which were properties lying off the right of way, not railroad property, and which therefore should have been assessed by local assessors. These properties increased the amount of the assessment of the plaintiff's railroad properties apportionable to the counties through which the plaintiff's railroad runs. In 1921 these local properties were also assessed by local assessors. The Revenue Commissioner brought forward for 1921 the assessment of plaintiff's railroad properties as the same was made by the State Tax Commission for 1920, which assessment as hereinbefore stated contained also these items of local property. The result was that these properties were assessed twice, locally and as a part of the assessment of railroad property, for the year 1921, and this amount of $295,917 should therefore be deducted from the total assessment of plaintiff's railroad properties apportionable to counties.

This error or confusion for 1921 was only called to the attention of the Commisisoner of Revenue a short time before this suit was instituted, and it was agreed by the office of the Commissioner of Revenue that it should be corrected or adjusted in this litigation.

17 The allegations of article seventeen are denied, except that the Commissioner did give the plaintiff a hearing as alleged. The defendants aver that the Commissioner of Revenue gave to the plaintiff the benefit of the same percentage of reduction allowed in the respective counties to other persons and corporations upon all of the
82 real property of the plaintiff lying off its right of way and not used by it in its daily operations for purposes of transportation, except as to certain errors or confusions caused by plaintiff's returns hereinafter referred to.

It is admitted that a hearing was had before the Commissioner of Revenue August 16, 1921; but it is denied that facts were adduced before him showing that the assessment of plaintiff's properties in North Carolina for taxation was unfair or discriminatory; that it would be taking the property of the plaintiff without due process of law, or that it would be denying to the plaintiff the equal protection of the law, or that it was not uniform, or that it was not made in accordance with Chapter 38 of the Public Laws of 1921, or that it should be reduced in order to equalize the value of the plaintiff's property with that of other persons and corporations assessed for taxes for the year 1921 under the laws of North Carolina; and it is further denied that such facts existed.

Further answering article seventeen, the defendants aver that the Revaluation Act, Public Laws of 1919, Chapter 84, was passed by the General Assembly of North Carolina for the purpose of making the tax laws of the State accord with Section 3 of Article V of the Constitution of North Carolina by making the ascertainment of the true value in money of all property in the State the basis of assessment for taxation. This law provided for a complete revaluation of all

property, real, personal, and mixed, by local appraisers in the county, and of railroad properties by the State Tax Commission, this new valuation to be used as the basis for computing the ad valorem taxes for the years 1920 to 1923, inclusive, when the same should be approved and the tax rates for the State revised by the General Assembly, and when the tax rates levied by the counties, cities, towns, and special-tax districts should be revised under rules to be laid down by the General Assembly.

The general revaluation of all property in the State was
83 made pursuant to this act. Real estate in general in the State was raised about two hundred per cent in value above the assessments for 1919. Railroad properties in the State were raised by the State Tax Commission under the provisions of the said Revaluation Act only about one hundred per cent above the 1919 assessments. The said revaluation and assessments were thereupon approved and adopted by the General Assembly in the Extra Session of 1920 (August), by Public Laws of 1920, Chapter 1, called the Revenue Act of 1920. By this statute the General Assembly adopted the revaluation assessment as the basis for the levy of taxes for the years 1920 to 1923, inclusive. This act, furthermore, revised the tax rates of the State and authorized and made the rules for the revision of tax rates by counties, cities, towns, and special-tax districts, which revisions were actually made.

The defendants aver that the revaluation had been made at a time when farm products, farm land, and real estate in general were bringing in the market abnormally high prices which at the time were thought to be stable. A sharp period of depression affecting particularly the values of such real estate and products followed almost immediately after the said reassessment under the Revaluation Act and much real property fell in market value below the value at which it had been assessed under the revaluation. It is denied, however, that the 1920 assessment of railroad properties in the State under the Revaluation Act was made at a time when such property was abnormally high, as other property was, and it is denied that any such depression in the market values of railroad system properties followed the said revaluation.

As a result of the condition above described as applied to farm lands and other real estate, there was enacted in the Machinery Act of 1921, Section 28 (*a*) thereof, as quoted in article ten of the complaint, which provided that county boards of commissioners and county boards of appraisers and review, appointed under the
84 Revaluation Act, should sit together jointly as county boards of review to determine if the valuation of real estate in the counties as a whole, as made under the Revaluation Act, was in excess of the fair value of such property at the time of meeting of the said boards of review. It provided that if it should be found that the assessments of real estate were thus excessive, the boards of review should find the average percentage of excess for their respective counties and report the same to the State Tax Commission. It provided that the valuation as assessed under the Revaluation Act and as reduced by this average percentage of reduction should be the value

at which property should be assessed for taxation unless and until changed by the State Tax Commission.

The county boards of review in sixty-seven counties in the State, after due consideration, decided to make reductions and report the same to the State Board of Equalization, pursuant to these provisions. The assessments of value which had been made under the Revaluation Act were reduced by these percentages and the resulting assessments became the assessments for taxation in those counties. Plaintiff's properties lying off the right of way, and which, therefore, were assessed by local assessors as other real estate, and by them reported to the State Board of Equalization, were reduced proportionately along with all other real property in those counties in which such property of the plaintiff was situated and such reductions were allowed, except as to the confusions hereinafter referred to.

Inasmuch as real property in general had been raised by the revaluation assessment to three times the former assessment, and the assessment of railroad properties by the State Tax Commission had been raised to only twice the former assessment; and inasmuch, therefore, as the assessments of real property in general for 1920 were in excess of their true market value, in 1921, and the
85 assessments of railroad properties for 1920 were not in excess of, but were at, their true value for 1921, the Commissioner of Revenue properly refused to make reductions of the said assessment of strictly railroad system property of the plaintiff to correspond with the cuts made by the county boards of review on real property in general.

It is denied that the failure of the Commissioner of Revenue to apply the said reductions to the assessment of plaintiff's railroad property was in any way a discrimination against the plaintiff. It is denied that the causes which brought about a reduction in the market value of real estate in general in the counties in which a reduction was made applied to the plaintiff's railroad property, and it is denied that plaintiff's railroad system property, tangible or intangible, was reduced in value as was real estate in general.

The fall in value of real estate in 1920 and 1921 was due primarily to a radical decline in the price of farm products. Tobacco, cotton, and other large products of North Carolina dropped to phenominally low prices, and the values of farm lands and other real estate, and the rentals therefrom, declined sharply with the said decline of prices. Railroads, however, were not so affected. The same volume of crops was moved by the railroads, although the farmers received greatly reduced prices therefor, and instead of the prices charged by railroads for their services being reduced, the railroads were actually allowed an increase of twenty-five per cent in freight rates and twenty per cent in passenger rates. It is, therefore, denied that the plaintiff should have been given or was entitled to the benefit of any reduction on the assessment of its railroad system property by reason of a decline in value of farm lands and other real property in general, which decline did not apply to railroad property.

It is denied that the values of the plaintiff's railroad properties depend upon the fluctuating values of other property in the State as

affected by temporary advances and declines. It is denied
86 that the business of the plaintiff fluctuates directly or in any corresponding proportion with the values of farm lands, or other real property, or with the prosperity of the State it serves for any one year or temporary period of time. It is denied that the plaintic's property has declined in value since 1920.

18. Answering the allegations of article eighteen, the defendants deny that there was any injustice, unfairness, or discrimination practiced by the Commissioner of Revenue or that any such injustice, unfairness, or discrimination existed in the assessing of the plaintiff's property. The total assessed valuation of real property in Edgecombe County for 1919 was $7,867,565. That assessment was raised under the Revaluation Act to $34,955,056 for 1920. The total assessed value of real estate for Nash County for 1919 was $7,865,680. That assessment was raised under the Revaluation Act to $36,300,096 for 1920. It results that under the Revaluation Act the real properties in these two counties instanced by the plaintiff were raised about four hundred per cent. The defendants aver that subsequent events and the sharp decline in 1921 proved that this increase under the Revaluation Act was excessive. The horizontal reduction of only fifty per cent was then applied to bring the 1920 assessment of the said properties back to its true actual value for 1921. Railroad properties, however, including the plaintiff's, had never been subjected to any such increase under the Revaluation Act. The plaintiff's total properties in North Carolina having been increased only from $34,645,345 for 1919 to $50,867,800 for 1920, and there is, therefore, no comparison to be drawn between the real estate in general and the plaintiff's railroad properties. It is denied that the plaintiff was entitled to any reduction on its assessment for 1920, and that the refusal of the Commissioner of Revenue to make any such reduction was in any way discriminatory or wrongful. It is denied that the plaintiff, as the result of the said assessment for 1921, will
87 pay to Nash or Edgecombe County, or to any other county, any unlawful or excessive tax.

The defendants attach hereto, as Exhibit "A" to this answer, a table showing the comparative assessments for 1919 and for 1920 in all counties in the State.

19. The provisions of Section 62 of the Machinery Act are admitted to be correctly quoted in article nineteen of the complaint.

It is admitted that property off the plaintiff's right of way is shown in returns both of the plaintiff and of local list-takers under the heading "Property outside of the right of way listed with the local list-takers." The defendants deny knowledge or information sufficient to form a belief as to whether the correct assessment of such property for 1920 was $1,677,178, and aver that the figure which the State Tax Commission ascertained from a checking of the confused and conflicting returns of the plaintiff and of local assessors was $1,301,637. There was confusion in the returns to the State Tax Commission and to the Commissioner of Revenue. The Commissioner of Revenue intends, and has always intended, in arriving

at the total value of the property, tangible and intangible, of the plaintiff in the State assessed for ad valorem taxes, to allow as reductions therefrom all reductions made by local assessors under the Act of 1921 on property of the plaintiff lying off the right of way and assessed by local assessors, and as to any such reductions which have been made by local assessors and which have not been deducted from the said total ad valorem assessment upon which the franchise tax is based, he stands ready to make such correction at any time upon proper showing, and offered to make such correction shortly prior to the institution of this suit, and since its institution his office has proposed to the plaintiff that such corrections be made in the course of this litigation.

20. Section 62 (*a*) of the Machinery Act of 1921 is admitted to be correctly quoted in article twenty of the complaint.

88 It is admitted that the Commissioner of Revenue refused to allow any reductions from the value of the plaintiff's railroad property assessed by the State Tax Commission in 1920 to correspond with reductions made by county boards of review on land in general in the counties, and the defendants aver that there was no reason for making such reductions, as hereinbefore alleged, since railroad properties had not fallen in value as had other real property, reference being here made to article seventeen of this answer and to Exhibit "A" attached hereto.

As hereinbefore stated, if the Commissioner of Revenue has failed to allow any reductions made by local assessors on property of the plaintiff lying off the right of way and to apply the same to the total value of plaintiff's property, railroad property and that off the right of way, as assessed for ad valorem taxation, upon which value the franchise or privilege tax is based, he stands ready upon proper showing to make such reduction, and his failure heretofore to do so, if he has so failed, has been due to confusion of the returns made by plaintiff and the local assessors and not to any purpose to refuse to allow such reductions.

It is denied that the illustration given by the plaintiff as to reductions made in Rocky Mount and in Nash and Edgecombe counties on real property in general and on real property of the plaintiff lying off the right of way and assessed by local assessors furnishes any grounds for the plaintiff's argument that the failure of the Revenue Commissioner to allow corresponding reductions on plaintiff's strictly railroad property assessed by the State Tax Commission was discrimination. It is denied that it was discrimination or a denial to the plaintiff of the equal protection of the law or in violation of the Fourteenth Amendment to the Constitution of the United States, or of Section 3 of Article V or of Section 9 of Article 7 of the Constitution of North Carolina. Further answering the allegations of article twenty of the complaint, the defendants refer to article

89 seventeen of this answer and ask that the same be considered as a part of this article.

21. Answering the allegations of article twenty-one of the complaint, the defendants deny that the Commissioner of Revenue has certified to the various counties, cities, and towns any valuation of the plaintiff's property in excess of that certified by the State Tax Commission in 1920. It is admitted, as hereinbefore stated, that there is some confusion in the returns of plaintiff and the assessors, and that some corrections should be made, and the Commissioner of Revenue is ready to make such corrections upon proper showing.

22. The allegations of article twenty-two are denied.

23. It is denied that the Commissioner of Revenue has refused to make any attempt to equalize the value of the plaintiff's property with the property of other persons and corporations. The defendants aver that the value of the plaintiff's property is equalized in that it is assessed for taxation at its true value in money as required by law. As to the allegation that there is no appeal under the laws of North Carolina from the assessment and valuation fixed by the Commissioner of Revenue, the defendants aver that the question of such right of the plaintiff to appeal from an assessment of its properties made by the Commissioner of Revenue never has arisen and cannot arise until the next assessment is made in 1924, since the Commissioner of Revenue has not now and has never had the power or duty to make an assessment of railroad property, but only to review the assessment already made by the State Tax Commission in and for the year 1920. The same law which gave other taxpayers the right to a review of the 1920 or revaluation assessment, gave railroads, including the plaintiff, the right of review before the Commissioner of Revenue, which right of review was granted to the plaintiff.

The defendants further aver that the plaintiff is not without a right of appeal from action of the Commissioner of Revenue; that under the law and procedure of North Carolina the writ of certiorari would lie at the suit of the plaintiff to the said Commissioner of Revenue from the Superior Court of North Carolina, and that by this writ the plaintiff may at any time take up for review any proceedings by the Commissioner of Revenue whereby its legal and constitutional rights may be deemed to be violated. It is denied that anything in the laws of North Carolina constitutes a denial to the plaintiff of the equal protection of the law or a violation of the uniformity clause of the North Carolina Constitution.

90

24. The allegations of article twenty-four are denied.

25. The defendants deny knowledge or information sufficient to form a belief as to what the tax rate for 1921 will be in the said counties. If it be true, as alleged, that the assessment of the plaintiff's property remains practically the same, whereas the assessment of other property is reduced, that is because the value of the plaintiff's property has remained practically the same, whereas the value of other property either had been over-estimated for 1920 or has decreased since then. It is denied that the same causes which brought

about a decrease in value of real estate in the counties in which the reduction was made applied to the plaintiff's railroad property, and it is denied that the decrease in value applies to the plaintiff's railroad properties as it does to real property in general. As hereinbefore alleged in article seventeen, the causes which decreased the values of land as land, did not apply to values of railroad property, and it is denied, therefore, that the reductions referred to were or were intended to be a general scheme of reductions due to general conditions applicable alike to railroad properties and to landed properties, and it is denied that the same should be applied to railroad properties and to the plaintiff's property in particular, as they were applied to real property in general. It is denied that the failure of the plaintiff to receive the benefit of such reductions to any
91 greater extent than the same were actually applied to properties of the plaintiff lying off its right of way, is contrary to any part of the Constituion of North Carolina, or to the Constitution of the United States, or that it denies to the plaintiff the equal protection of the law or takes its property without due process of law.

26. Section 65 of the Machinery Act of 1920 is admitted to be correctly quoted in article twenty-six, and the defendants aver that the said Section 65 and the proviso thereof, constitute the statute particularly controlling the assessment for taxation of the property of railroads doing interstate commerce and operating both within and without the State of North Carolina, such as the plaintiff's railroad.

27. It is denied that the method employed by the State Tax Commission, in arriving at the valuation of the plaintiff's property in North Carolina for the year 1920, was illegal or resulted in the overassessment of the plaintiff's property for taxation under the laws of North Carolina. It is denied that the Commissioner of Revenue unjustly or illegally refused to reduce the said assessment for the year 1921. It is denied that the State Tax Commission used the method of capitalization of the plaintiff's net income for North Carolina, exclusively, in arriving at the said assessment. As required by Section 64 of the Machinery Act, the State Tax Commission in 1920, in determining the value of the tangible and intangible property of the plaintiff for taxation gave due consideration to all those factors, modes and methods therein required to be considered. And as further required by Section 65 of the said Machinery Act, the State Tax Commission also gave due consideration to the character of the roadbed and fixed equipment of the plaintiff in North Carolina; to the number of miles of double track in the said State; to the amount of gross and net earnings per mile of road in the said State; and, to all other factors which would give a greater or less value per mile of road in this State than the average value for the plaintiff's entire system.

92 The State Tax Commission applied the foregoing methods and considered the foregoing factors in arriving at the assessment of the plaintiff's property, as it was required to do by law. It is denied that the method of capitalization of the plaintiff's net in-

come in North Carolina was the exclusive method use by the State Tax Commission. That method was used merely as one consideration in connection with the other considerations, as hereinbefore stated. In the application of that method, in so far as it was applied, it is admitted that the average net income of the plaintiff in North Carolina for the years 1915 to 1919, inclusive, was taken as a basis, and was obtained by deducting from the revenue allocated to North Carolina the average annual taxes paid in that State, and the average annual operating expenses allocated to that State. The defendants aver that the determination of the net income for the State of North Carolina is justly and fairly arrived at by that method. It is admitted that the allocation of operating expenses by the plaintiff to branches or divisions of the plaintiff's railroad and to states is not made with mathematical accuracy. The defendants aver that the allocation of operating revenues to any branch or division of the plaintiff's railroad or to any state is made with mathematical accuracy, and that the allocation of expenses, although it may not be mathematically accurate, is made by the plaintiff itself regularly according to a method devised by the plaintiff; that this method, as defendants are informed, is the most accurate which the plaintiff has been able to devise; that it is impossible to find a method of such allocation which will be absolutely accurate; and that the system used by the plaintiff approximates accuracy.

It is denied that the State laws and regulations of North Carolina requiring reports prescribe the methods of accounting or of allocation of revenues and expenses which the plaintiff shall adopt; the said laws and regulations merely require of the plaintiff reports of gross revenue, gross operating expenses, and net revenue.

93 The plaintiff devises its own methods of allocating these items to obtain the figures required to be reported by the laws of North Carolina. It is denied that under the existing accounting methods of the plaintiff for allocating expenses to North Carolina, operating expenses so allocated are understated and net income overstated. It is admitted that only expenses accruing within that State are charged to State expenses, while some traffic passing through that State is assembled or originates at, and is destined to, terminal points without North Carolina at which large operating expenses accrue, no part of which expenses is apportioned to North Carolina, while the mileage revenue therefrom is apportioned to North Carolina. On the other hand, the defendants aver that an enormous amount of interstate traffic of the plaintiff originates in North Carolina destined to points without the State; that large operating expenses accrue at the points of origin in North Carolina and are wholly apportioned to that State, whereas only a small proportion of the mileage revenue of such shipments is apportioned to North Carolina, and portions of such mileage revenue are apportioned to other states across which such shipments are made without the corresponding allocation to such states of any part of the terminal expenses accruing at the points of shipment in North Carolina. The defendants further aver that the same is true as to large amounts of interstate traffic coming from without North Carolina and termi-

nating within North Carolina. For illustration, Wilson and Rocky Mount are among the largest tobacco markets in the State. Great quantities of tobacco are shipped over plaintiff's line from those and other points destined to points in other states. In the assembling, preparation, and initiating of these shipments there are large terminal expenses at the points of shipment, the whole of which are charged in North Carolina expenses, while North Carolina revenue is credited with only a very small mileage proportion of the entire revenue from such shipments. The same thing is true of
94 large shipments from many points throughout the cotton belt in eastern North Carolina, of shipments of tobacco from various smaller markets, of shipments of fruits and vegetables and of shipments of naval stores and other products of this State over Plaintiff's lines in this State.

Large interstate shipments also come from other states into North Carolina destined to points in this State over plaintiff's lines, as for example, to Wilmington, where they are received both for distribution and exportation from this important port. On such shipments there are large terminal expenses at the point of destination in this State, the whole of which are charged in North Carolina expenses, while North Carolina revenue is credited with a very small proportion of the entire revenue from such shipments.

While terminal points in North Carolina are not concentrated in a few large cities like Savannah or Richmond, they are widely spread throughout all that part of the State served by the plaintiff, and there are great numbers of smaller cities and towns through which the plaintiff's railroad runs which are important shipping, receiving, and terminal points for the large imports into, and exports from this large and highly productive State.

In addition, there are located within North Carolina at Rocky Mount among the largest terminal yards and repair shops of the plaintiff, and other large yards are located at Wilmington, N. C The defendants are informed and believe, and so allege, that as much as seventy-five per cent of the operating expenses at these points are logically applicable to interstate traffic, but that all of the said operating expenses are charged against North Carolina revenue

28. It is denied that this method of allocating earnings to the State of North Carolina is illegal or works to the disadvantage of the plaintiff for the purpose of ascertaining the net income of the plaintiff in North Carolina as alleged in article twenty-eight of the complaint.

95 (*a*) On information and belief the defendants deny that traffic which moves through North Carolina greatly exceeds the traffic originating in, or destined to, North Carolina, and that North Carolina escapes terminal expenses on any more than a proper proportion of the plaintiff's total traffic; and the defendants aver that traffic originating in North Carolina runs through many other states which receive the benefit of revenues from shipments for which North Carolina is charged the entire assembling and initial expenses, and that traffic destined to North Carolina likewise runs

through many other states which receive the benefit of their mileage proportion of the revenues from shipments, the entire final terminal expenses for which are charged in North Carolina expenses. The defendants further aver that this system of allocation of revenues and expenses which the plaintiff itself has devised and uses, and which the State Tax Commission received from plaintiff and adopted, is a method which evens itself up and gives to the respective states through which the plaintiff's system runs the most accurate possible allocation, otherwise the plaintiff itself would have abandoned this system and devised another.

(*b*) It is admitted that as to individual terminal points in North Carolina, the expenses at such points are less than those at certain larger terminal points in other states as named by the plaintiff in article twenty-eight (*b*). However, as hereinbefore alleged, this simply results from the fact that in other states through which the plaintiff's system runs terminal expenses are concentrated in larger terminal points, while throughout the portion of North Carolina served by the plaintiff terminal expenses are widely disseminated among a multitude of smaller terminal points. The defendants, therefore, aver that the allocation of operating expenses to North Carolina made by the plaintiff and filed with the Tax Commission represents in the aggregate an approximately correct charge of expenses against North Carolina revenue, and that the ratio of
96 operating expenses to operating revenues in North Carolina is truly less than that of the entire system.

(*c*) It is denied that under the scheme of taxation adopted by North Carolina, property of the plaintiff outside that State and not used in the plaintiff's business in that State, is taxed by the State. The defendants aver that if any properties of the plaintiff outside of the State of North Carolina are taken into consideration in arriving at the assessment of plaintiff's property in the State, it is only done in so far as the said properties outside of the State are a part of the values of the plaintiff's entire organic system and may be properly considered in estimating the true value of the properties of the plaintiffs in this State.

It is admitted that the operating revenue and operating expenses for the plaintiff's entire system are kept accurately, in so far as possible, and that its accounting is done under rules prescribed by the Interstate Commerce Commission and is checked by that body, and also by certified public accountants. It is denied that the capitalization of the plaintiff's net income for its entire system, the determination therefrom of the value of the plaintiff's entire property, and the apportionment of this result to North Carolina to give the value of properties in North Carolina is the proper method to be used as a consideration in arriving at the value of the plaintiff's properties in North Carolina.

29. It is denied that in arriving at the valuation of the plaintiff's property for the year 1920 the State Tax Commission did not assess and value the same according to the law of North Carolina. It is denied that either the net-earnings plan or the stock-and-bonds plan alone could have been properly used by the Commission in ar-

riving at the valuation which it placed upon the plaintiff's property without the use at the same time of the other considerations required by the statutes of North Carolina as hereinbefore alleged.

97 The defendants aver that the correctness of the said valuation cannot be checked or tested by an exclusive application of either of the plans referred to in article twenty-nine of the complaint. It is denied that the said valuation, tangible or intangible, was made upon an arbitrary basis or without justification. It is admitted that the said Commission assessed the tangible property of the plaintiff for the year 1920 at a valuation of $39,620,930, or 149.33 per cent more than the same was assessed for 1919; the defendants aver, however, that the assessment of real properties in general in North Carolina for the year 1920 was more than 200 per cent higher than that for the year 1919, a very much larger increase than that applied to the plaintiff's property. It is denied that the State Tax Commission arrived at the assessment of the plaintiff's tangible property by a sole consideration of the Investment in Road and Equipment of the entire system, and it is denied that the said assessment gave to North Carolina any property valuation to which it was not entitled, and which is not properly taxable by it. It is admitted that the intangible property was assessed at $11,246,870, but it is denied that that assessment was not made in accordance with Sections 64 and 65 of the Machinery Act of 1921. It is admitted that the aggregate valuation for 1920, tangible and intangible, was $50,867,800, and the defendants aver that the said valuation and assessment was correctly arrived at by a due consideration of all the factors, mode and methods required by the statutes of North Carolina, and that the same was legal and correct.

The defendants do not deny that the tables of figures on page 43 of the complaint are correct so far as calculations are concerned. They deny, however, that the proper figure to capitalize was the alleged average net operating revenue of the plaintiff's entire system per year for five years of $8,932,592.89, and that the figures in the second table, showing the allocation of the result of such capitalization to North Carolina at various percentages are in any way

98 the measure of the value of the total properties of the plaintiff in North Carolina, or should properly be considered in arriving at the value of the said properties. The defendants do not deny that the tables of figures on page 44 of the complaint are correct in their calculations. They deny, however, that the figures on that page, showing the capitalization at various percentages of the alleged average net operating revenue of the plaintiff for North Carolina, are, or any one of the said figures is, the measure of the value of the total properties of the plaintiff in North Carolina and subject to taxation by that State; and they deny that the assessment of plaintiff's properties for taxation can be tested or proved by a comparison with any of the said figures.

It is denied that the assessment of the plaintiff's property amounts to a tax on property beyond the jurisdiction of North Carolina, that the same is a burden upon interstate commerce, or is in violation of the commerce clause of the Constitution of the United States.

30. It is admitted that six per cent was the percentage used by the State Tax Commission in capitalizing the plaintiff's net income to the extent that that method was used at all in arriving at the said assessment. The defendants aver that that is a proper figure for such purpose. They aver that six per cent is the legal rate of interest for North Carolina. They deny that the percentage which should have been used is eight per cent or any other figure than six per cent. It is further alleged that the use of a six per cent capitalization of the plaintiff's net income for North Carolina was only one of the many factors to which the State Tax Commission gave due consideration as required by statute in arriving at the assessment for 1920, and that the consideration of this six per cent capitalization method had the effect of making the assessment less than the consideration of other factors would have made it, and resulted, therefore, in a benefit to the plaintiff. The defendants further aver that in-
99 terest rates on money show temporary fluctuations, and that the values of permanent properties of railroads do not fluctuate in any corresponding manner.

31. It is admitted that the figures quoted in article thirty-one were submitted to the Commissioner of Revenue as bearing on the question as to whether he should reduce the plaintiff's assessment for taxation. It is denied that he refused to give any consideration to the said figures, and the defendants aver that he did give them due consideration. The defendants aver, however, that the said decrease of net operating revenue from 1916 to 1920 was purely temporary, that for the year 1921 the ratio of operating expenses and taxes to operating revenue is decreasing rapidly in the plaintiff's favor, and that its net earnings are increasing and promise to continue to increase. It is denied that the temporary depression suffered by the plaintiff is in any way an index of what its net earnings will be or was reflected in any corresponding depression in the actual values of the plaintiff's railroad properties. It is denied that the plaintiff's property values fluctuated in correspondence with fluctuation in values which may have occurred with respect to other persons and corporations.

32. It is admitted that the statute of North Carolina required the Commissioner of Revenue to consider the value placed upon the property of the plaintiff by the public, as evidenced by the value of capital stock, bonds, certificates of indebtedness and other obligations, the value of which is based upon the earning capacity of the property, as alleged in article thirty-two; it is denied, however, that the said statute makes that consideration controlling or allows it to be used as the sole determining factor, in arriving at the valuation of the property of the plaintiff in North Carolina.

The defendants deny knowledge or information sufficient to form a belief as to the figures quoted by the plaintiff on pages 45 to 50, inclusive, of the complaint as to its capitalization, par value,
100 and average market value. It is denied, however, that either the alleged figure representing the par value capitalization allocated to North Carolina on mileage basis of $41,150,361.90, or

the alleged figure representing the market value capitalization allocated to North Carolina upon a mileage basis of $34,908,626 for 1920, or of $33,696,925 for 1921, is the measure of the value of plaintiff's property in North Carolina, or was or should have been a controlling factor in arriving at the valuation of the same. It is denied that the assessment of the plaintiff's property can be proved or tested by a comparison of either one of these figures.

33. The defendants deny that the so-called franchise tax is not a franchise tax measured by the value of the use of the property but is in truth and in fact an ad valorem tax as alleged in article thirty-three of the complaint. The defendants aver that the said tax is an excise, franchise, or privilege tax imposed upon the privilege of doing a strictly intrastate business within the State of North Carolina. It is denied that the said tax is not levied equally; the defendants aver that the said excise, franchise, or privilege tax, levied upon the plaintiff in addition to the ad valorem property tax, does not and cannot constitute double or unequal taxation and is violative neither of Section 3 of Article V of the Constitution of North Carolina, nor of the Fourteenth Amendment to the Constitution of the United States. It is denied that the ad valorem assessment of the plaintiff's property is excessive, iniquitous or damaging, and that the franchise or privilege tax of 1/10 of one per cent of the said assessment is in any way excessive, iniquitous, damaging, or illegal. It is denied that the said tax is levied under the guise of a franchise tax, but the defendants aver that it is a true franchise or privilege tax, not a property tax, and that it is entirely within the power of the State of North Carolina to levy the said franchise or privilege tax in addition to ad valorem property taxation, and that by
101 reason of the fact that the said franchise or privilege tax is admeasured, not by any earnings from interstate commerce nor by any properties outside of North Carolina, but only by the total properties of the plaintiff within the State of North Carolina, the said tax is in no way a burden upon interstate commerce; that it is not a tax on the privilege of engaging in interstate commerce, nor is its payment made a condition precedent thereto, and that it violates no part of the Constitution of the United Sates.

34. It is denied that the said franchise tax is not uniform and is not levied equally upon corporations, as alleged in article thirty-four of the complaint. It is alleged that the placing of railroad companies in one class and of other corporations in another class, and the imposition of a franchise or privilege tax based on total properties in the State on corporations of the first class, and the imposition of such a tax based on capital stock upon corporations of the second class is a reasonable, legitimate, and perfectly justifiable classification, and in no way violates the rule of uniformity prescribed by Section 3 of Article V of the Constitution of North Carolina, or denies to the plaintiff the equal protection of the law, or deprives it of its property without due process of law, or constitutes a burden upon interstate commerce, or in any way violates the Constitution of the United

States or the commerce clause thereof, or the Fourteenth Amendment thereto.

35. Answering allegations of article thirty-five of the complaint, the defendants admit that the plaintiff was required to pay for the year 1920, and did pay, under protest, $50,867.80, the same being the result of a calculation based upon 1/10 of one per cent of the value of the property of the plaintiff, tangible and intangible, in this State, as assessed for ad valorem taxation, used as the measure of the extent to which the plaintiff is exercising its franchise (the privilege of engaging in intrastate commerce) in this State.

102 They admit also that the plaintiff will be required to do the same for the year 1921. They deny that under the provision of Section 82 (3½) of the Revenue Act, the plaintiff should only be required to pay upon one-half of such value. They aver that Section 82 (3½) has no application to railroads or to the franchise or privilege taxes on railroads; that it is a section which was enacted in 1920 and was specifically limited in its application to taxes on corporations as levied in Section 82 of the Revenue Act of 1919; that railroads and the franchise taxes thereon were not included in any part of the said Section 82 of the Revenue Act of 1919; that when Section 82 (6½) was inserted in that section in 1920, as hereinbefore alleged, thereby shifting the provision for a franchise or privilege tax on railroads to its present position as subsection (6½) of the said Section 82, it was not intended to make the said Section 82 (3½) applicable to the tax imposed by section 82 (6½); and that the said Section 82 (3½) does not now apply, and never has applied, to railroads or taxes on railroads.

It is denied that the failure of Section 82 (3½) to apply, or to be applied, to the franchise or privilege tax levied upon the plaintiff deprived or deprives the plaintiff of the equal protection of the laws or violates the Fourteenth Amendment to the Constitution of the United States or the uniformity clause of the Constitution of North Carolina.

The defendants pray that the prayers made by the plaintiff in article thirty-five, and each of them, be denied by this Court; they aver that this Court has no power to grant such prayers, or either of them, that the franchise tax paid by the plaintiff to the State of North Carolina for 1920 was a legal tax, correctly ascertained, and lawfully due to the said State, and that the said Section 82 (3½) has no application to such tax, and has no effect to reduce the correct amount thereof to one-half of the amount so paid by the plaintiff.

36. The allegations of article thirty-six are denied.

103 37. Answering the allegations of article thirty-seven, the defendants deny that the imposition upon the plaintiff of an ad valorem property tax, of a franchise or privilege tax of 1/10 of one per cent based upon the ad valorem valuation of the plaintiff's properties within the State, and of an additional income tax of three per cent on net operating revenue, referred to by the plaintiff as a system of pyramiding taxes, amounts to or constitutes a regulation of commerce between the states, a tax upon interstate commerce, or a

burden on interstate commerce of the plaintiff, or violates Section 8 of Article I of the Constitution of the United States. The defendants allege that it is perfectly competent for the State of North Carolina, after taxing the property (tangible and intangible) of the plaintiff ad valorem as property, to levy upon the plaintiff an additional tax for the privilege of engaging in intrastate commerce (exercising its franchise in the State), and then to levy an additional tax of three per cent on its net income, which said income tax is levied equally upon all other corporations without discrimination.

38. It is admitted that the plaintiff will owe to the State, counties and municipalities the legally enacted tax upon whatever may be found to be the legal assessment for taxes upon its properties in the State of North Carolina, and the defendants aver that the said legal assessment for 1920 was that fixed for that year, and that for 1921 was that fixed for that year, excepting corrections hereinbefore referred to.

39. Answering the allegations of article thirty-nine, the defendants deny that the said assessment is illegal, and that this suit is brought to avoid a multiplicity of suits. It is denied that the said assessment is invalid; it is denied that unless the tax collecting officers of the several counties and municipalities, and the State officials, defendants herein, are restrained they will proceed to collect any illegal assessment against the plaintiff. On the contrary, the defendants aver that the said taxes which the said officers will
104 proceed to collect are valid and lawful; that they of right will become a first lien upon the real property of the plaintiff in North Carolina if not paid; it is denied that the said rightful lien will constitute a cloud upon the title to the said property against which equity should grant relief; it is denied that the plaintiff will be damaged by the remedies for the collection of the said lawful and valid taxes; and it is denied that the plaintiff has no adequate remedy at law.

Prayer.

Wherefore, the defendants, having fully answered the complaint filed in this suit, pray the Court that every and singular the prayers of the said complaint be denied and that the same be dismissed at the costs of the plaintiff.

JAMES S. MANNING,
Attorney-General of North Carolina;
FRANK NASH,
Assistant Attorney-General of North Carolina,
Solicitors for the Defendants.

WILLIAM P. BYNUM,
GEORGE H. BROWN,
LOCKE CRAIG,
THOMAS D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel.

105 A. D. Watts, being duly sworn, says that he is one of the defendants in the above entitled suit; that he has read the foregoing answer to the complaint, and that it is true of his own knowledge except as to matters therein stated on information and belief, and as to them he believes it to be true.

A. D. WATTS.

Sworn to and subscribed before me, this 11th day of November, 1921.

W. P. STACY,
Associate Justice N. C. Supreme Court.

Comparative Statement of Taxable Values for the Years 1919 *and* 1920, *Showing Number of Acres of Land, Value of Timber, Manufacturing, Mineral, and Quarry Properties, Average Value per Acre, Value of Town Lots, Value of Real Estate, Value of Personal Property, and the Aggregate Value of Real and Personal Property Listed with County Supervisors.*

(NOTE.—This statement does not include railroad and public service corporations, banks, and corporate excess assessed by the State Tax Commission.)

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Alamance, 1919.....	257,742	$2,786,845	$10.81	$2,058,055	$6,844,638	$5,532,968	$11,377,606
Alamance, 1920.....	262,836	9,966,036	37.92	7,159,464	24,934,832	10,537,710	35,472,542
Alexander, 1919.....	157,970	1,283,419	8.12	194,050	1,667,975	1,615,101	3,283,076
Alexander, 1920.....	165,761	4,864,885	29.30	681,423	6,527,000	1,956,886	8,483,886
Alleghany, 1919.....	143,300	957,833	6.68	28,343	996,054	940,622	1,936,676
Alleghany, 1920.....	147,001	5,383,189	36.62	83,210	5,383,189	1,465,520	6,848,709
Anson, 1919.....	328,634	2,663,408	8.11	964,020	4,379,115	3,781,961	8,161,076
Anson, 1920.....	329,715	10,529,114	31.93	2,855,697	13,384,811	6,831,284	20,216,095
Ashe, 1919.....	268,508	2,094,573	7.80	73,833	2,172,551	2,555,766	4,728,317
Ashe, 1920.....	272,678	12,360,480	45.33	322,432	12,731,463	3,917,513	16,648,976
Avery, 1919.....	113,053	1,059,508	9.37	128,961	1,571,789	672,046	2,243,835
Avery, 1920.....	130,932	3,863,827	29.51	308,197	4,793,754	1,133,928	5,927,682
Beaufort, 1919.....	379,913	3,422,611	9.00	2,534,192	6,365,173	4,231,976	10,597,149
Beaufort, 1920.....	396,759	24,325,213	61.31	4,238,253	29,207,006	8,462,799	37,669,805
Bertie, 1919.....	450,883	3,040,339	6.74	862,130	4,055,859	3,467,887	7,523,746
Bertie, 1920.....	400,557	9,629,044	24.00	2,259,976	13,958,782	5,301,677	19,260,459
Bladen, 1919.....	502,723	2,655,945	5.28	287,732	3,545,259	2,250,967	5,796,226
Bladen, 1920.....	524,585	10,092,335	19.24	794,790	11,630,040	3,418,325	15,048,365
107 Brunswick, 1919....	476,230	2,406,552	5.05	490,048	2,896,600	1,640,498	4,537,098
Brunswick, 1920....	502,593	5,477,845	10.90	970,035	7,953,027	2,017,305	9,970,332
Buncombe, 1919.....	312,643	6,664,587	21.32	13,484,771	21,862,308	9,232,489	31,094,797

Buncombe, 1920.....	.....	.....	....	.....	60,319,591	17,442,518	77,762,109
Burke, 1919.....	297,084	2,445,419	8.23	883,211	3,651,492	2,318,258	5,969,750
Burke, 1920.....	316,304	7,164,477	22.65	1,932,615	11,047,772	4,793,304	15,841,076
Cabarrus, 1919.....	208,079	2,213,175	10.64	1,734,076	6,729,195	5,406,793	12,135,988
Cabarrus, 1920.....	222,036	9,964,995	44.88	6,185,440	30,211,743	15,069,837	45,281,580
Caldwell, 1919.....	227,055	1,809,693	7.97	669,221	3,502,721	2,142,059	5,644,780
Caldwell, 1920.....	258,296	7,792,632	30.17	2,896,422	13,257,242	4,458,020	17,715,262
Camden, 1919.....	145,857	1,083,289	7.42	58,607	1,288,061	672,329	1,960,390
Camden, 1920.....	149,262	3,587,989	24.04	121,547	3,736,356	846,591	4,582,947
Carteret, 1919.....	239,554	1,703,631	7.11	1,056,084	2,993,060	1,586,379	4,579,439
Carteret, 1920.....	233,162	7,972,149	34.19	1,650,790	10,405,339	2,940,095	13,345,434
Caswell, 1919.....	262,748	1,686,517	6.42	116,680	1,803,197	2,188,466	3,991,663
Caswell, 1920.....	268,746	8,743,808	32.54	309,340	9,053,148	2,920,697	11,973,845
Catawba, 1919.....	256,932	2,460,000	9.58	1,604,830	4,092,916	5,370,515	10,063,431
Catawba, 1920.....	254,423	12,339,008	48.50	7,735,670	26,677,188	9,357,453	36,034,641
Chatham, 1919.....	404,913	3,063,242	7.04	504,565	4,082,437	3,551,644	7,644,081
Chatham, 1920.....	435,773	10,063,328	23.09	1,243,450	11,813,037	4,594,017	16,407,054
Cherokee, 1919.....	273,738	2,115,327	7.42	717,719	2,833,046	1,690,555	4,523,601
Cherokee, 1920.....	303,762	3,045,638	10.03	871,876	4,264,124	2,331,748	6,595,872
Chowan, 1919.....	99,967	1,159,788	11.60	582,677	2,007,621	1,778,608	3,786,229
Chowan, 1920.....	110,499	4,410,953	39.92	2,412,177	6,823,130	3,594,041	10,417,171
Clay, 1919.....	126,778	743,216	5.86	22,361	808,427	425,462	1,233,889
Clay, 1920.....	170,813	2,106,635	12.33	47,580	2,154,215	693,421	2,847,636
Cleveland, 1919.....	278,395	3,827,884	13.75	1,520,971	7,574,843	4,909,563	12,484,406
Cleveland, 1920.....	277,843	16,422,057	59.11	4,554,698	28,158,726	11,168,356	39,327,082
Columbus, 1919.....	458,631	3,429,666	7.48	822,207	4,922,220	4,061,355	8,983,575
Columbus, 1920.....	.....	.....	....	.....	15,789,229	6,600,000	22,389,229
Craven, 1919.....	364,212	2,421,364	6.65	4,354,543	7,617,226	4,097,447	11,714,673
Craven, 1920.....	323,112	15,488,629	....	6,611,775	30,638,102	9,691,903	40,330,005
Cumberland, 1919.....	338,497	3,116,070	47.94	13,256,829	28,745,458	9,352,424	38,097,882
Cumberland, 1920.....	358,317	12,835,535	9.21	2,513,375	6,348,011	4,990,251	11,338,262
Currituck, 1919.....	148,426	1,513,584	35.82	7,393,804	20,522,039	7,567,734	28,089,773
Currituck, 1920.....	125,080	4,541,124	10.20	.....	1,733,291	705,677	2,438,968
Dare, 1919.....	208,400	494,859	36.30	.....	4,541,124	1,033,871	5,574,995
Dare, 1920.....	.....	.....	2.37	100,929	626,963	301,642	928,605
Davidson, 1919.....	35,442	.....	....	.....	2,282,743	593,808	2,876,551
Davidson, 1920.....	355,066	15,295,793	....	.....	6,957,305	3,806,554	10,763,859

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Davie, 1919	160,640	1,529,050	9.52	358,529	2,294,469	3,043,548	5,338,017
Davie, 1920	162,798	7,224,899	44.00	2,753,491	9,978,390	3,939,443	13,917,833
Duplin, 1919	449,760	3,689,316	8.20	850,138	4,723,287	4,976,607	9,699,894
Duplin, 1920	457,279	23,071,185	50.45	1,100,364	24,211,549	7,285,518	31,497,067
Durham, 1919	178,534	3,569,232	19.99	8,021,399	14,777,121	20,808,813	35,585,934
Durham, 1920	182,608	9,530,019	52.19	19,560,602	43,426,847	66,651,182	110,078,029
Edgecombe, 1919	303,562	4,131,420	13.60	3,036,247	7,867,565	7,415,180	15,282,745
Edgecombe, 1920	309,497	24,897,646	80.44	10,054,910	34,955,056	10,256,906	45,211,962
Forsyth, 1919	230,680	2,871,776	12.45	9,546,925	14,234,803	22,223,137	36,457,990
Forsyth, 1920	237,190	13,961,294	58.86	21,757,422	72,197,173	64,402,548	136,599,721
Franklin, 1919	303,215	3,082,712	10.16	1,482,479	4,607,194	4,565,486	9,172,680
Franklin, 1920	301,008	14,667,266	48.73	1,927,314	16,594,580	6,167,700	22,762,367
Gaston, 1919	201,263	2,648,515	13.16	2,807,246	11,302,506	8,192,666	19,495,172
Gaston, 1920	211,528	14,233,409	67.29	11,767,733	52,344,289	22,745,959	75,090,248
Gates, 1919	196,651	1,830,440	9.31	136,799	1,986,648	1,433,647	3,420,295
Gates, 1920	158,145	5,250,857	33.20	326,225	5,631,242	1,663,562	7,294,894
Graham, 1919	177,414	984,505	5.55	28,350	2,132,988	599,954	2,732,942
Graham, 1920	195,803	2,106,480	10.76	46,350	4,869,736	1,337,240	6,206,976
Granville, 1919	319,516	2,839,542	8.88	1,267,086	4,324,621	4,571,084	8,895,705
Granville, 1920	334,774	9,515,391	38.20	3,463,640	16,088,145	6,775,885	22,864,030
Greene, 1919	159,369	1,946,611	12.21	295,283	2,250,882	3,391,246	5,642,128
Greene, 1920	159,276	13,358,939	83.87	984,687	14,343,626	5,666,466	20,010,092
Guilford, 1919	393,239	6,646,810	16.90	9,183,654	18,884,912	12,058,586	30,943,498
Guilford, 1920	394,318	20,889,651	52.98	22,906,580	85,158,132	30,894,441	116,052,573
Halifax, 1919	409,577	4,404,845	10.75	2,349,656	8,675,643	10,385,714	19,061,357
Halifax, 1920	425,386	16,359,967	38.22	6,436,375	35,636,872	12,536,587	48,173,459
Harnett, 1919	353,154	3,077,468	8.65	740,537	4,742,889	5,425,881	10,168,771

Harnett, 1920	346,418	14,418,178	41.62	3,514,044	20,823,234	8,165,342	28,988,576
Haywood, 1919	321,154	3,037,607	9.45	1,779,507	6,120,975	2,762,717	8,883,692
Haywood, 1920	343,881	10,960,771	31.87	4,024,593	17,326,364	6,080,935	23,407,299
Henderson, 1919	199,895	2,150,723	10.86	1,862,495	4,173,152	1,881,099	6,054,251
Henderson, 1920	195,716	4,689,786	23.00	3,796,873	11,322,157	3,101,037	14,423,194
Hertford, 1919	204,576	2,118,831	10.36	629,451	2,840,986	3,090,703	5,931,869
Hertford, 1920	201,537	8,738,122	43.36	1,991,046	10,747,168	3,609,665	14,356,833
108 Hoke, 1919	224,703	2,129,767	9.48	300,364	2,653,091	2,020,935	4,674,026
Hoke, 1920	221,230	9,967,460	45.05	944,313	11,244,263	2,995,910	14,240,173
Hyde, 1919	275,961	1,540,190	5.58	40,230	1,619,250	1,071,108	2,690,358
Hyde, 1920	420,604	11,837,110	28.14	443,911	12,281,021	2,035,801	14,316,822
Iredell, 1919	363,920	3,754,812	10.32	2,726,620	7,376,308	6,785,263	14,161,571
Iredell, 1920	364,507	15,358,713	42.63	6,728,014	26,500,459	10,117,767	36,618,226
Jackson, 1919	291,748	1,555,849	5.33	188,013	2,168,624	1,993,645	4,162,269
Jackson, 1920	319,180	6,068,768	19.01	222,843	6,608,611	3,149,193	9,757,804
Johnston, 1919	481,735	5,092,429	10.57	1,973,354	7,912,383	10,322,128	18,234,511
Johnston, 1920	498,946	32,620,897	65.38	7,092,072	42,030,148	15,477,315	57,507,463
Jones, 1919	291,477	1,666,958	5.72	260,788	1,969,921	1,378,496	3,348,417
Jones, 1920	294,634	7,585,777	25.75	712,063	8,447,840	2,255,143	10,702,983
Lee, 1919	155,733	1,467,390	9.42	926,313	2,735,378	2,144,202	4,679,580
Lee, 1920	163,139	6,712,698	41.15	1,019,819	8,706,469	3,371,944	12,078,413
Lenoir, 1919	222,375	2,205,289	9.92	2,329,826	4,859,933	5,518,123	10,378,056
Lenoir, 1920	239,868	20,753,505	86.52	11,629,585	33,857,010	10,910,400	44,767,410
Lincoln, 1919	179,225	2,119,195	11.82	586,071	3,446,982	4,256,437	7,703,419
Lincoln, 1920	193,391	7,504,532	38.80	2,009,709	12,584,088	5,417,219	18,001,307
Macon, 1919	260,925	1,490,137	5.71	406,713	2,006,353	1,293,125	3,299,478
Macon, 1920	275,716	5,011,838	18.18	189,631	5,201,469	1,330,869	6,532,338
Madison, 1919	262,922	2,108,634	8.02	392,267	3,241,392	2,617,167	5,858,559
Madison, 1920	278,933	7,576,333	27.16	791,445	8,367,778	2,775,922	11,143,700
Martin, 1919	267,953	2,956,812	11.13	941,390	4,116,229	4,768,842	8,885,071
Martin, 1920	287,276	12,848,746	....	.....	2,675,983	1,042,136	3,718,119
McDowell, 1919	254,751	.....	44.72	2,699,065	15,613,311	6,799,760	22,413,071
McDowell, 1920	241,210	2,814,834	11.67	1,540,981	8,139,746	3,861,589	12,001,335
Mecklenburg, 1919	313,806	4,032,705	12.85	13,112,770	23,133,825	15,082,064	38,217,889
Mecklenburg, 1920	314,277	14,423,868	67.31	56,054,830	93,500,878	33,585,655	127,086,533
Mitchell, 1919	128,935	718,301	5.57	76,756	795,057	650,049	1,445,106
Mitchell, 1920	138,372	4,027,771	29.11	278,203	4,340,208	1,133,117	5,473,325

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Montgomery, 1919.....	288,986	1,706,532	6.11	629,642	2,858,839	2,478,702	5,337,541
Montgomery, 1920.....	289,109	5,090,834	17.60	1,738,731	6,830,165	3,091,370	9,921,535
Moore, 1919.....	415,165	3,178,355	7.65	1,871,452	5,434,221	3,005,237	8,439,458
Moore, 1920.....	401,486	8,004,405	19.93	5,240,261	15,604,749	5,224,372	20,829,121
Nash, 1919.....	335,415	3,878,799	11.50	3,219,117	7,865,690	8,391,768	16,257,448
Nash, 1920.....	323,886	20,867,100	67.82	9,818,482	36,300,096	12,130,528	48,430,624
New Hanover, 1919.....	92,962	2,100,440	22.59	10,087,280	14,941,453	5,406,709	20,348,162
New Hanover, 1920.....	114,132	3,171,311	28.05	14,309,005	37,517,377	12,528,021	50,045,398
Northampton, 1919.....	318,278	3,705,130	11.64	623,790	4,463,235	4,436,914	8,900,149
Northampton, 1920.....	331,152	11,257,234	33.99	1,110,300	12,367,534	4,772,232	17,139,766
Onslow, 1919.....	342,132	2,846,648	8.32	489,741	4,772,360	2,651,357	7,423,717
Onslow, 1920.....	416,808	7,308,697	20.69	992,565	10,807,997	2,756,647	13,564,644
Orange, 1919.....	241,018	1,951,875	7.78	1,051,230	3,916,209	3,078,757	6,994,966
Orange, 1920.....	244,404	7,866,281	32.19	2,219,764	10,086,045	6,222,234	16,308,279
Pamlico, 1919.....	197,344	1,291,248	6.51	217,596	1,519,204	832,713	2,351,917
Pamlico, 1920.....	190,034	4,008,264	21.09	457,130	5,546,213	1,410,210	6,956,423
Pasquotank, 1919.....	148,427	1,678,547	11.31	2,136,000	4,120,322	2,922,259	7,042,581
Pasquotank, 1920.....	137,882	5,016,537	33.04	2,984,095	13,421,447	5,980,231	19,401,678
Pender, 1919.....	309,026	1,801,116	5.83	241,571	2,219,798	1,616,117	3,835,915
Pender, 1920.....	451,802	7,307,962	16.17	633,713	8,492,798	2,019,023	10,511,821
Perquimans, 1919.....	151,630	1,431,991	9.44	473,929	2,009,068	1,684,783	3,693,851
Perquimans, 1920.....	135,126	4,579,632	33.89	1,035,330	5,739,609	2,359,005	8,098,714
Person, 1919.....	248,726	1,907,348	7.67	491,389	2,633,069	2,368,806	5,001,875
Person, 1920.....	254,630	10,097,690	39.65	1,751,638	12,452,278	3,624,517	16,076,795
Pitt, 1919.....	377,008	4,386,655	11.64	2,896,842	7,464,487	8,655,875	16,120,362
Pitt, 1920.....	395,113	33,378,935	87.54	10,810,632	44,254,598	17,617,391	61,871,989
Polk, 1919.....	131,161	1,031,414	7.86	630,604	1,662,018	759,328	2,421,346
Polk, 1920.....	130,925	3,221,221	24.61	403,878	5,043,541	3,691,363	8,734,904

Randolph, 1919	450,446	3,426,965	7.61	1,189,826	5,390,639	4,514,894	9,905,333
Randolph, 1920	489,717	13,352,406	27.27	2,842,531	18,468,305	7,049,532	25,517,837
Richmond, 1919	271,037	1,733,510	6.39	1,610,266	5,067,210	3,581,552	8,648,762
Richmond, 1920	298,155	8,335,941	28.63	5,335,137	18,450,390	8,000,022	26,450,412
Robeson, 1919	508,290	5,661,400	11.14	2,326,580	9,063,675	8,063,294	17,126,969
Robeson, 1920	544,258	41,507,181	76.23	3,410,336	48,024,939	16,401,672	64,426,611
Rockingham, 1919	345,078	3,213,287	9.08	2,215,162	8,399,673	7,917,904	16,317,477
Rockingham, 1920	354,743	20,502,620	57.79	17,139,898	47,813,378	24,561,986	72,375,364
Rowan, 1919	315,694	3,506,437	11.11	4,975,488	9,727,065	6,753,857	16,480,922
Rowan, 1920	319,701	14,383,945	46.00	14,703,488	38,548,806	8,802,070	47,350,876
Rutherford, 1919	323,305	2,660,608	8.23	635,344	4,331,111	3,204,275	7,535,386
Rutherford, 1920	326,699	12,869,438	39.33	717,300	19,912,642	8,824,619	28,737,261
Sampson, 1919	530,046	3,850,395	7.26	678,681	4,539,778	4,864,205	9,403,983
Sampson, 1920	578,092	16,169,478	28.00	2,181,805	22,717,990	9,305,331	32,023,240
Scotland, 1919	190,468	2,194,402	11.52	708,682	3,661,138	2,732,179	6,393,317
Scotland, 1920	190,381	15,478,175	81.30	3,520,521	21,319,716	7,693,755	29,013,471
Stanly, 1919	228,929	1,794,885	7.84	1,109,296	4,727,603	3,983,469	8,711,172
109 Stanly, 1920	245,668	10,574,057	43.04	3,745,636	21,225,000	10,608,893	31,833,893
Stokes, 1919	274,915	2,364,379	8.60	212,216	2,618,965	3,512,301	6,131,266
Stokes, 1920	286,724	10,328,827	36.02	544,334	10,873,161	4,310,595	15,183,756
Surry, 1919	330,406	3,850,503	11.65	1,737,885	5,796,250	5,375,888	11,172,138
Surry, 1920	347,849	13,476,044	38.72	5,053,375	18,529,419	7,845,186	26,374,605
Swain, 1919	346,039	2,275,531	6.56	348,794	2,657,925	1,908,527	4,566,452
Swain, 1920	346,196	6,057,460	17.49	596,960	6,830,920	2,619,045	9,449,965
Transylvania, 1919	197,595	1,518,091	7.68	382,984	2,044,250	1,308,115	3,352,365
Transylvania, 1920	198,554	4,684,341	23.59	462,625	5,304,466	2,597,049	7,901,515
Tyrrell, 1919	192,927	974,680	5.05	117,342	1,105,114	645,502	1,750,616
Tyrrell, 1920	169,491	2,917,151	17.21	235,845	3,152,996	1,069,834	4,222,830
Union, 1919	389,203	2,975,210	7.65	1,714,833	5,092,979	6,205,125	11,298,104
Union, 1920	392,429	15,605,830	39.77	4,671,356	21,444,971	10,172,675	31,617,646
Vance, 1919	161,724	2,103,131	13.00	1,776,205	4,550,421	5,579,165	10,121,596
Vance, 1920	167,208	9,428,756	56.39	5,553,505	17,856,566	8,662,735	26,519,301
Wake, 1919	531,678	5,703,809	10.73	11,038,122	19,342,872	12,302,850	31,645,722
Wake, 1920	506,877	23,181,356	45.73	25,987,726	53,739,885	18,726,589	73,900,221
Warren, 1919	255,618	2,568,511	10.49	875,602	3,556,222	3,828,467	7,384,689
Warren, 1920	277,193	10,277,899	36.89	1,926,632	12,373,446	4,851,406	17,224,852
Washington, 1919	200,868	1,586,739	7.90	501,569	2,180,780	1,556,516	3,737,296

Comparative Statement of Taxable Values for the Years 1919 and 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Washington, 1920.....	136,375	6,118,254	26.88	1,010,540	7,468,873	2,231,456	9,700,329
Watauga, 1919.....	207,881	1,632,998	7.85	140,420	1,773,418	1,938,899	3,712,317
Watauga, 1920.....	217,097	6,750,358	31.09	501,234	8,820,897	2,419,708	11,240,605
Wayne, 1919.....	340,735	3,771,064	11.07	4,026,567	8,449,151	9,173,853	17,623,004
Wayne, 1920.....	339,270	27,607,644	81.37	14,860,093	47,323,132	17,666,582	64,989,714
Wilkes, 1919.....	467,528	2,991,286	6.40	668,155	3,780,058	3,014,511	6,794,569
Wilkes, 1920.....	469,130	7,999,140	17.05	880,767	12,352,003	4,357,959	16,709,962
Wilson, 1919.....	223,631	2,866,661	12.82	3,109,243	6,323,509	9,005,000	15,328,509
Wilson, 1920.....	236,077	26,715,771	113.17	13,685,529	40,401,300	20,069,562	60,470,862
Yadkin, 1919.....	211,977	1,999,500	9.43	218,745	2,233,845	1,926,589	4,160,434
Yadkin, 1920.....	212,459	8,992,113	42.32	659,503	9,651,616	2,772,947	12,424,563
Yancey, 1919.....	174,935	1,142,880	6.53	83,079	1,335,074	1,204,819	2,539,893
Yancey, 1920.....	184,300	6,981,404	37.88	126,724	7,144,065	2,583,189	9,727,254

110 *Affidavit of Charles J. Joseph.*

Filed Jan. 20, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et al.

Affidavit of Charles J. Joseph.

STATE OF NORTH CAROLINA,
County of New Hanover:

Charles J. Joseph, being first duly sworn, deposes and says:

That from 1900 to 1902 he was Real Estate Agent and Tax Agent of the Plant System of Railroads, in charge of the States of Georgia, Florida and Alabama; that from 1902, when the Plant System of Railroads was sold to and merged into the Atlantic Coast Line Railroad Company, a Virginia corporation, he was Tax Agent of the Second and Third Divisions of the Atlantic Coast Line Railroad Company, in charge of the States of Georgia, Florida, Alabama and a part of South Carolina; that from 1907 to date, he has been Tax Agent of the entire system of the Atlantic Coast Line Railroad Company, in charge of the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama; that from 1883 to 1900,
111 he was civil engineer and Chief Clerk to Superintendent of the Florida Southern Railroad Company, Savannah, Florida & Western Railroad Company and the Plant System of Railroads, at various periods of time; that his duties as such Real Estate Agent and Tax Agent were to return for taxation the properties of such railroads, in the several states traversed by them, and to appear before the tax boards of the said states in the matter of the assessment of properties of said railroads.

That under an Act of the General Assembly of North Carolina of 1919 entitled, "An Act to Provide for the Listing and Valuing of all Property, Real, Personal and Mixed, at its Real Value in Money," the property, real, personal and mixed, of every citizen of the State of North Carolina, was ordered to be revalued at its true value in money, and in accordance with Section 31 of said Act, the State Tax Commission of North Carolina was ordered to make a complete revaluation of the properties of all railroad, telegraph, telephone and street railway companies, to be used as a basis for computing taxes for the years 1920, 1921, 1922 and 1923, such revaluation to be made

in accordance with the general rule and intent and purposes of the Act as to all other property.

The said State Tax Commission was given the right to require all information required by Chapter 234 of North Carolina of 1917, together with a sworn estimate by an officer of the company of the cost of reproduction of their property new, including side tracks, etc., less depreciation and other information as set forth in said Section 31 of said Revaluation Act.

In accordance with the authority given to the said Commission it prepared and furnished to said railroad corporations a form for listing railroad properties requiring said railroad companies to fill it up and complete in detail the various items set forth in said form, which included the engineering and overhead accounts, lands used for carrier and non-carrier purposes, roadbed, crossings and signs, telegraph and telephone lines, signals, stations and interlocking plants, station and office buildings, roadway buildings, water
112 and fuel stations, shops and equipment, roadway machines, locomotives and passenger and freight train cars, working equipment and miscellaneous. This form for listing or questionnaire sent to the railroad companies also included the amount of capital stock and the number of shares, the market and par value of same, the amount of bonds and funded debt, certificates of indebtedness, and the market value thereof, and the rate of dividends on such stocks.

The affiant on April 7, 1920, on behalf of the Atlantic Coast Line Railroad Company returned said form completely filled out as requested by the said Commission and enclosed same with a letter to J. S. Griffin, Clerk in Charge of Revaluation and Assessments at Raleigh, together with a schedule of the value of the stocks and bonds, a copy of which letter and schedule are hereto attached to this affidavit and prayed to be made a part hereof and marked Exhibit A. Reference is also hereby made to the said report made to the said State Tax Commission which is prayed to be taken as a part of this affidavit as fully as if the same were herein incorporated. Thereafter, and on May 7, 1920, the said State Tax Commission called on this affiant as Tax Agent of the Atlantic Coast Line Railroad Company for a statement of the value of its property investment filed with the Interstate Commerce Commission for the purpose of aiding the Interstate Commerce Commission in fixing its rate basis so as to arrive at a 6% return under the Transportation Act, 1920, a copy of which said request from the State Tax Commission is hereto attached and marked Exhibit B and prayed to be made a part of this affidavit.

That in accordance with said request and on May 31, 1920, the said Atlantic Coast Line Railroad Company filed with the State Tax Commission of North Carolina a statement of its investment account as requested. A copy of the letter from this affiant as Tax Agent to the State Tax Commission of May 31, 1920, together with
113 a copy of the said property and investment account attached is hereto appended to this affidavit and marked Exhibit C, and prayed to be taken as a part hereof.

That thereafter, and on June 10, 1920, the said Tax Commission notified this affiant as Tax Agent of the Atlantic Coast Line Railroad Company, that the said Commission had valued and assessed the property, tangible and intangible, of the Atlantic Coast Line Railroad Company in North Carolina, at $55,929,629.00 that said notice, a copy of which is attached hereto and marked Exhibit D, simply gives the aggregate amount of the assessments against this company's properties in North Carolina and gives no information as to the basis of said assessment nor subdivisions thereof, as between tangible and intangible and as between the real and personal property.

The Atlantic Coast Line Railroad Company being dissatisfied with said assessment requested a hearing upon the same, which hearing was granted and the matter heard on June 23, 1920, before the said Commission at Raleigh, at which hearing the Atlantic Coast Line Railroad Company produced evidence to show that the said assessment was excessive. This affiant proved at said hearing that under the statute of North Carolina the said assessment could not be arrived at by any of the methods fixed by law; that if the said assessment was made upon the par or market value of the capitalization of said railroad and allocated to North Carolina on a mileage owned basis, that the value in North Carolina on May 1, 1919, on par value of stocks and bonds, was $38,628,301, and the market value as of May 1st, 1919, was $34,551,233; that if the assessment was made upon the net operating revenues less taxes, and capitalized at 6% for the year 1919, it would amount to $34,799,584; that if it was made upon the earning capacity as fixed by the actual compensation allowed under the Federal Control Act, it would amount to $34,-
106,346; that if it was based on investment and road equip-
114 ment and materials and supplies, and allocated to North Carolina, it would amount to $40,330,357. Affiant further brought to the attention of the Commission and proved at said hearing that if in calculating the investment in road and equipment no deductions have been made on account of the large and costly terminals outside of the State of North Carolina, which give a greater value per mile of line outside of North Carolina as compared with the lines inside. At said hearing the Chairman of the said State Tax Commission stated that the Atlantic Coast Line Railroad Company prior to the revaluation was already assessed at 85% of its actual value.

At this hearing this affiant and counsel, who attended said hearing, requested said State Tax Commission to advise the Atlantic Coast Line Railroad Company the basis or method upon which it reached such valuation but the State Tax Commission refused to do so, stating that the amount found was an arbitrary amount. The said Atlantic Coast Line Railroad Company protested against said assessment and as the result and hearing the same was reduced and fixed at the sum of $50,867,800. The Atlantic Coast Line Railroad Company, through its representatives, had a conference with the State Tax Commission on the 16th day of July, 1920, when it again protested against said assessment, but without avail. It later, on July

19, 1920, filed a formal protest to said assessment, a copy of which is attached hereto and marked Exhibit E, and prayed to be taken as a part hereof. In this connection this affiant says that at said hearing before the said State Tax Commission on July 16, 1920, the Commission stated that it took the four years of 1915, 1916, 1917 and 1918, and used them in arriving at the earning basis for the Atlantic Coast Line Railroad Company and refused to take the year 1919, or any portion thereof, although the date fixed for the valuation was May 1, 1919, and although such figures were furnished them and proof was made to the said Commission that the United States Gov-
115 ernment had increased as of January 1, 1919, wages of all kinds, and that materials and supplies of all grades were increased during the year 1919, which increase was so heavy that it was materially reflected in the revenues of the said Atlantic Coast Line Railroad Company and that the operating ratio for 1919 up to that time was 84.18% as against 1918 of 74.86%, and 1917 of 67.57%, and although proof was made to the said Commission that the difference between the operating revenue for 1918 and 1919 in North Carolina was $1,116,865.18. At said hearing on July 16th, the Commission stated that the assessment of the Atlantic Coast Line Railroad Company was an arbitrary assessment based upon the earning capacity plus an arbitrary amount added.

Affiant attaches hereto a statement marked Exhibit F, showing the average operated miles for the entire system and in the State of North Carolina, for the years 1915, 1916, 1917 and 1918, and the gross operating revenue and operating expenses, and taxes and net operating revenue, for the same years, which statement shows the average net operating revenues, less taxes for the entire system, was $10,870,765.29, which capitalized at 6% shows, a valuation for the entire system of $181,179,422.00. The average operated mileage of the Atlantic Coast Line Railroad Company in North Carolina for the said four years was 1,043.17, or 21.928% of the entire system which would make the value allocated to North Carolina upon an average operating mileage basis, $39,729,023.66, all of which infoaormation was in poe-ession of the said State Tax Commission of North Carolina at said hearing.

Affiant further says that the said State Tax Commission refused to take any further action in regard to the reduction of this property and the taxes for the year 1920 and since that time the Atlantic Coast Line Railroad Company has paid the 1920 taxes under protest.

Affiant further says that under none of the bases generally
116 used for valuation can the figure $50,867,800, be arrived at as the valuation of the Atlantic Coast Line Railroad Company. Affiant further shows that notwithstanding the statement made by the Commission to fix the valuation of the Atlantic Coast Line Railroad Company, first, that they used the earning basis, and, second, that they made an arbitrary assessment, affiant begs leave to quote from the report of the said State Tax Commission to Governor of North Carolina, dated August 10, 1920, in which the said State Tax Commission informed the Governor that in valuing the property of

the railroad companies it used the investment account to find its physical value. On page 5 of the said report the Commission says:

"Valuation of Railroads.—One frequent criticism has been that the valuation of railroad property could not be increased it being understood that they were assessed at full value before. Our report shows that railroad properties had been increased from $125,417,618.00 to $259,587,158.00, or more than double. Under the new Interstate Commerce Act the Interstate Commerce Commission is required to make rates that will yield an average return of not less than five and one-half per cent upon the railroad lines as a whole and to find a fair value of these properties as a ba-is for making the new rates. That Commission has not yet determined the basis upon which the value of the railroad lines will be finally fixed. It will take several years to complete the physical valuation of all these properties. Pending this final valuation the railroad lines have submitted to the Interstate Commerce Commission what is known as their investment accounts and have asked that this basis of value be used for determining the scale of rates and amounts of return they are en-
117 titled to earn their properties. It seems clear to us that the time has come when the value upon which railroad or public utility is permitted to earn a return in the value upon which it should pay taxes in this state. In either case the purpose is to find the fair value of the property. So that generally our valuation of railroad lines in this state is based upon a mileage proportion of their investment account which they have asked the Interstate Commerce Commoission to adopt for making their rates, and to this mileage proportion we have added the value which we find to represent the intangible value of their North Carolina lines based upon the volume of business in this state greater than the average volume of traffic on their lines as a whole.

"The experiences of recent years have been conclusive that any amount of tax levied against railroad companies is a tax upon the *the* whole public served by them. If it were legal to do so and we were to collect all public revenue from railroad companies it would simply mean that we would pay our taxes through railroad depots and ticket offices instead of the public officers who now collect them. The new assessment of railroads does not represent as great an increase as the average increase of other property for the reason that they were assessed relatively higher than other property before, but we anticipate that it will meet the fair demand of public opinion when it is known that they are assessed like other property at their full value, and upon a valuation quite as high as that upon which they are asking to be permitted to earn a return."

Affiant begs leave to refer to said report, an entire copy of which will be exhibited upon this hearing. Of the above valuation
118 of the property of this company of $50,867,800, the Commission has informed this affiant by letter dated September 27, 1920, that the sum of $39,620,930 is tangible property and the sum of $11,246,870 is intangible property.

That the legislature of 1921 as set forth in the bill of complaint herein authorized a horizontal reduction in real property to be effective in the year of 1921, and the said Atlantic Coast Line Railroad Company made application for a reduction in its assessment and an informal hearing was granted by the Commissioner of Revenue on June 1, 1921, at which time proof was made to the said Commissioner of Revenue of the decrease in the market values of the securities of this affiant since 1919, and of the decrease in its earning power and as to the errors in the report fixed by the State Tax Commission; that the cost of materials and supplies in 1921 was less than in 1919, which necessarily affected the value of the physical property; that the net income of the said Atlantic Coast Line Railroad Company for North Carolina had decreased from $3,161,042 in 1916 to $795,493, while the operating expenses and taxes had increased from $7,056,605.49 in 1916 to $17,827,740.50 in 1920; that the various counties throughout which this railroad company's property had made horizontal reductions in the real estate in these counties and request was made for similar horizontal reductions of this railroad company's property; that the railroads enjoying the highest rate of credit were having to pay from 7½ to 8 and 8½% for money, and in some cases higher; and that in addition to said reduction in real estate to which the railroad was entitled under the law it was entitled to a further reduction on account of the overassessment of its property and the facts and figures as set forth in the bill of complaint were exhibited to the Commissioner of Revenue notwithstanding which the said Commossioner of Revenue advised this affiant that the assessment of the said Atlantic Coast Line Railroad Company's
119 property for the year 1921, was $51,163,717.00, or an increase of $295,917.00 over the assessment of 1920. The Atlantic Coast Line Railroad Company protested this assessment and asked for a hearing which was granted by the said Commissioner of Revenue on July 21, 1921, who invited the Chairman of the North Carolina Corporation Commission and the Attorney General to sit with him as advisors. At said hearing the Commissioner of Revenue advised that the law did not permit a hearing by the State Board of Equalization or an appeal to that body, and the Attorney General, who was present so ruled. At this hearing proofs were again offered of all of the foregoing facts and that the capitalization should be increased from 6% to 7% or 8%. The Atlantic Coast Line Railroad Company produced facts and figures at this hearing to show that the value of all real estate in North Carolina had decreased, and that the earnings of this company had fallen and that the operating expenses had risen. Notwithstanding all the evidence presented to the said Commissioner, the substance of which is set forth in bill of complaint in this case the said Commissioner of Revenue certified down said assessment of $51,163,717.00 to the State Auditor, who certified the same to this company.

That on August 13th, and August 15th, 1921, the Atlantic Coast Line Railroad Company protested against the assessment made for 1921, and further protested the refusal of the Commissioner of Revenue to allow a reduction in this assessment, copies of which protests

are hereto attached and marked Exhibits G and H, from which it will be shown that the Atlantic Coast Line Railroad Company did both at said hearing and in said protests submit to the Commissioner of Revenue evidence showing that the said assessment was illegal and that it was entitled to a reduction.

Affiant says that the decrease in value of farm products and decrease in acreage planted in North Carolina was reflected in the returns of the Atlantic Coast Line Railroad Company,

120 Affiant further shows that the increase in percentage of complainant's operating revenues for the year 1920 over 1919 was 16.62 while its operating expenses increased for the same period of time 28.87.

This affiant further says that the only known method of ascertaining the intangible value of the property of a corporation is to take the difference between the tangible value of the property and the entire value of the property; that Section 64 of the said Machinery Act of North Carolina provides that the intangible property must be assessed separately and the said Machinery Act provides that the value of the franchise shall be determined by consideration of the gross earnings as compared with the operating expenses, and particularly, by consideration of the value placed upon the whole property by the public, (the value of the physical property being deducted), as evidenced by the market value of the capital stock, certificates of indebtedness, bonds or other securities the value of which is based upon the earning capacity of the property.

Affiant shows that the tangible value of this company's property was fixed by the State Tax Commission in 1920 as $39,620,930.00, and the intangible value at $11,246,870.00, and if the aggregate value of the tangible and intangible property of this company was attempted to be fixed on earning basis, for the four years from 1915 to 1918, inclusive, and North Carolina's proportion allocated to it on operating mileage basis the total value would amount to only $39,729,023.66, which would leave an intangible value of $129,-023.66. If the said value is to be fixed on the stock and bond plan and allocated to North Carolina on basis of the market value of the stocks and bonds as of May 1, 1919, the value of the same would be $38,628,301, which would leave no intangible value, but affiant further says that even if the stock or bond plan or any other plan were used, then that portion of the complainant's property outside of North Carolina which is not used in its business as a carrier in operating its property in North Carolina should be first de-

121 ducted which would leave an intangible value much smaller than either of the figures herein shown. If the value of the said property is to be based upon the amount of Federal compensation paid to complainant during Federal control then the value of said property would be $36,227,090, or $3,393,840, less than the assessed value of the tangible value of the property for the year 1920 in the State of North Carolina. Affiant furnishes these figures because of the fact that in the assessment of the said property for 1920 the said State Tax Commission of the State of North Carolina

called for said figures in considering the assessment of this company's property. Affiant further asserts, however, that the net operating revenues of this company have materially decreased in the year 1920 and 1921 from what they were for the years prior to the year 1919, and that, therefore, the revenue for the years 1919, and 1920, should be considered in the valuation of this company's property, and that if the value of said company's property is based upon the five years from 1916 to 1920, inclusive, and capitalized upon earning basis at 6% and allocated on operating mileage basis to North Carolina the value would be $32,279,413.17, or leaving no intangible value.

In reference to the answer to the first allegation of the bill of complaint affiant further says that the second track and side track mileage should not be used in figuring the mileage under the law of North Carolina for that under Section 65 of the Machinery Act it is provided that when any railroad has a part of its road in North Carolina and a part in another state the Commission shall ascertain the value of its property as a whole, and divide it in proportion to the length of such main line of railroad in North Carolina bears to the whole length of said main line of road and determine the value in North Carolina accordingly.

Affiant further says that the operating expenses and revenues of large steam railroads are computed on basis of main line, single track mileage, and in figuring the earnings and value on
122 earning basis the same is calculated on basis of single track main line mileage. Affiant further says that under the Rules Pertaining to Operating Statistics of Large Steam Railways, promulgated by the Interstate Commerce Commission, the Interstate Commerce Commission provides that the average number of miles of road of the first running track and of other main line tracks not including yard tracks and sidings shall be shown for freight service and mixed service combined, and also for passenger service and mixed service combined, and that class 1 roads, of which complainant is one, must report all of their earnings upon this basis in ascertaining the operating earnings per mile of road.

Affiant further says that the figures shown in allegation 32 on pages 45, 46 and 50, of the bill of complaint herein, showing the stocks and bonds and other obligations of this company, and miles of road and values on mileage basis, and the values upon the stock and bond basis as outlined herein, are true and correct.

Affiant further says that the confusion and misunderstanding referred to in answer to the sixteenth allegation of complainant was made by the Commission itself and not by the complainant; that the Commission was informed of the discrepancies and agreed to correct the discrepancies in the year 1921, which they failed to do.

C. J. JOSEPH.

Sworn and subscribed to before me, this 21st day of December, 1921.

[SEAL.] C. S. MORSE,
Notary Public.

My commission expires February 19, 1922.

123 EXHIBIT "A."

Wilmington, N. C., April 7, 1920.

Mr. J. S. Griffin,
Clerk in Charge of Revaluation Assessment,
Raleigh, N. C.

DEAR SIR:

Taxes—Tax Returns—State of North Carolina—Year 1920.

The Atlantic Coast Line Railroad Company herewith submits the Returns of its property in this State for taxation, following the form for listing railroad properties as furnished by the Commission from the best information obtainable, not upon the cost of reproduction less depreciation which is impossible to furnish in the period allotted by the Commission, but upon the inventory value. The rolling stock is returned as follows:—Locomotives and passenger equipment that are located in the State in intra-state business and a mileage basis of those used in inter-state business; the freight and work equipment of the entire system distributed to North Carolina on the percentage of road mileage basis.

If the railroads are to be taxed as an indivisible unit, they must be valued as an indivisible unit. In such cases there are (at least) two recognized methods known as the Stock and Bond plan and the Capitalization of Income plan.

Stock and Bond Plan.—Statement herewith attached shows this Company's stock and bonds actually outstanding at par and market values, showing the value per mile owned and amount distributed to the State of North Carolina on a mileage basis. The stock and bonds of a railway company represent the value of all property of the company, whether devoted to operation or not, lands, real estate, manufacturing plants, compress warehouses, stock and bonds of other companies, etc. To untangle all these items and make the proper deductions from the total value represented by the stock and bonds is a task too large in the period allotted to make the Returns. The corporate money value of a railway company and the money values incorporated in the property devoted to operation are two different magnitudes, sometimes differing quantitatively by millions of dollars. No deductions are made on account of large and costly terminals at Pinners Point, Va., Charleston, S. C., Savannah and Brunswick, Ga. and Jacksonville and Tampa, Fla., causing a great excess value per mile of lines outside this State as compared with those inside.

124 The annual compensation guaranteed under Section 1 of the Federal Control Act is herewith shown. This compensation, (based upon the earnings for three years,) less corporate expenses and taxes, capitalized at 6% and distributed to North Carolina on an operation mileage basis would give the State the real value of the operative property based upon earnings.

Valuation for tax purposes seeks to determine value, not cost. It is concerned only indirectly with actual investments and not at all with the reasonableness of capital expenditures or the usefulness of the property in rendering the particular public service. It is vitally interested in earning power, therefore, it should not be based upon cost of reproduction but upon nominal market value. The physical property of a railroad is highly specialized; the track or distribution system has no use other than in public service, except in connection with a going concern the greater part of the property has only salvage or junk value. The earning power sought for tax purposes is that fixed by rates, and until the rates are based upon the cost of reproduction and the earnings are ascertained from those rates, the value of railroads should be assessed upon their present earnings, which is the compensation paid them by the Government, their lessees.

The investment in the Road and Equipment of the entire system owned December 31, 1918, as shown on the books of this Company, is $189,127,244.60 or $39,849.23 per mile owned December 31, 1918, distributed to North Carolina, 950.15 miles, would be $37,862,746. The excess of this amount over that shown in the returns is accounted for by the costly terminals, etc. outside of the State of North Carolina.

Valuation in North Carolina.

Aggregate valuation of tangible property, shown in Returns	$32,188,328
Aggregate valuation of stock and bonds plan, par value	$35,276,115
Aggregate valuation of stock and bonds plan, market value	41,552,857
Aggregate valuation of Capitalization Federal Compensation	$34,957,106
Aggregate valuation of investment	$37,862,746

Yours very truly,

C. J. JOSEPH,
Tax Agent.

(Here follows table marked page 125.)

ATLANTIC COAST LINE RAILROAD COMPANY
STOCKS AND BONDS

EXHIBIT "A"

	Total Par Value May 1, 1919	Market Value	Total Market Value May 1, 1919
CAPITAL STOCK:			
Common	$ 68,559,400	97	$ 66,502,618
Preferred	196,700	100	196,700
	$ 68,756,100		$ 66,699,318

	Principal	Total Par Value Actually Outstanding	Market Value	Total Market Value May 1, 1919
MORTGAGE BONDS:				
Sandford & St. Petersburg R. R. Co.....1st 4%.....	$ 275,000	$ 275,000	80	$ 220,000
Petersburg R. R. Co., Class "A".....1st 5%.....	868,000	868,000	97	841,960
Petersburg R. R. Co., Class "B".....2nd 6%.....	800,000	800,000	103	824,000
Alabama Midland Ry. Co.....1st 5%.....	2,800,000	2,800,000	97½	2,730,000
Northeastern R. R. Co.....Con 6%.....	657,000	657,000	104	683,280
Savannah, Florida & Western Ry. Co.....1st 6%.....	4,056,000	4,056,000	107¾	4,355,130
Savannah, Florida & Western Ry. Co.....1st 5%.....	2,444,000	2,444,000	96½	2,358,460
Wilmington & Weldon R. R. Co.....Gen 1st 5%.....	3,062,000	3,062,000	100	3,062,000
Wilmington & Weldon R. R. Co.....Gen 1st 4%.....	938,000	938,000	80	750,400
Charleston & Savannah Ry. Co.....1st 7%.....	1,500,000	1,500,000	112½	1,687,500
Brunswick & Western R. R. Co.....1st 4%.....	1,407,000	1,407,000	82¾	1,162,534
Norfolk & Carolina R. R. Co.....1st 5%.....	1,314,000	1,314,000	99	1,300,860
Richmond & Petersburg R. R. Co.....Con 4½%.....	300,000	300,000	87½	262,500
The Florida Southern R. R. Co.....1st 4%.....	2,418,000	2,418,000	80	1,934,400
Norfolk & Carolina R. R. Co.....2nd 5%.....	400,000	400,000	99	396,000
Wilmington & Newbern R. R. Co.....1st 4%.....	106,000	106,000	80	84,800
Atlantic Coast Line R. R. Co. of S. C.....Gen 1st 4%.....	5,547,000	5,047,000	82	4,138,540
Atlantic Coast Line R. R. Co.....1st Con Mtg 4%.....	51,326,750	50,863,000	81¾	41,391,505
Atlantic Coast Line R. R. Co.....Uni Mtg 4%.....	15,000	15,000	80	12,000
Atlantic Coast Line R. R. Co.....Gen Uni Mtg 4½%...	46,631,674	22,699,000	80½	18,272,695
Atlantic Coast Line R. R. Co.....Gen Uni Mtg 4%.....	100,000	100,000	80	80,000

Brunswick & Western R. R. Co.

MISCELLANEOUS OBLIGATIONS:					
A. C. L. R. R. Co.—Convertible Debentures	4%	$ 4,481,045	$ 4,481,045	80	$ 3,584,836
A. C. L. R. R. Co.—Certificates of Indebtedness	4%	135,100	135,100	80	108,080
W. & W. R. R. Co.—Certificates of Indebtedness	7%	600	600		600
		$ 4,616,745	$ 4,616,745		$ 3,693,516
EQUIPMENT TRUST BONDS:					
A. C. L. R. R. Co.—Series "B"	4½%		$ 750,000	87	$ 652,500

RECAPITULATION

	Par Value May 1, 1919	Market Value May 1, 1919
Capital Stock	$ 68,756,100	$ 66,699,318
Mortgage Bonds	102,069,000	86,548,564
Income Bonds	15,000	15,000
Miscellaneous Obligations	4,616,745	3,693,516
Trust Bonds	750,000	652,500
	$ 176,206,845	$ 157,608,898
Miles Owned May 1, 1919	4,746.07	
Average Value per mile	$37,126.89	$33,208.29
Miles in North Carolina	950.15	
Value in North Carolina	$ 35,276,115	$ 31,552,857

NOTE: The Atlantic Coast Line Railroad Company has outstanding $35,000,000 par value of 50 years 4% *Collateral Trust* Gold Bonds, which are not secured by mortgage upon the property of the Atlantic Coast Line Railroad Company and are not a part of its funded debt, but are secured by the pledge of 367,200 shares of the capital stock of the Louisville & Nashville Railroad Company owned by the Atlantic Coast Line Railroad Company, which is not included in above.

FEDERAL COMPENSATION

Annual Compensation under Federal Control Act	$ 10,180,915.15
Corporate Expenses and Taxes, Year ended December 31, 1918	470,607.80
	$ 9,710,307.26
Capitalized at 6%	$161,838,454.
Miles Operated Entire System, December 31, 1918	4,839.76
Miles Operated North Carolina, December 31, 1918	1,045.72
North Carolina's proportion Miles Operated, December 31, 1918	21.60%
21.60% of $161,838,454	$34,957,106

COST OF ROAD AND EQUIPMENTS

Cost of Road and Equipment to December 31, 1918		$189,127,244
Miles owned May 1, 1919	4,746.07	
Cost of Road and Equipment, per mile owned		$39,849.23
Miles in North Carolina	950.15	$37,862,748

126 EXHIBIT "B."

Raleigh, N. C., May 17, 1920.

Mr. C. J. Joseph, Tax Agent,
Atlantic Coast Line Railway,
Wilmington, N. C.

DEAR SIR:

The commission would like to have from your company a statement of the value of your property investment filed with the Interstate Commerce Commission for the purpose of aiding the Interstate Commerce Commission in fixing its rate basis so as to arrive at a six per cent return under the Transportation Act, 1920.

The commission would like to have this information as early as possible.

Yours very truly,

J. S. GRIFFIN,
Clerk in Charge Revaluation Assessment.

G.-E.

Mr. W. L. Stanley, Ass't to Pres., S. A. L. R. R., Atlanta, Ga.
Mr. Murray R. Hubbard, Tax Commissioner, Southern Railway, Atlanta, Ga.
Mr. M. S. Hawkins, Asst. to Pres., N. & S. R. R., Norfolk, Va.
Mr. H. G. Morrison, Gen. Counsel, C. C. & O. R. R., Johnson City, Tenn.

"EXHIBIT "C."

Wilmington, N. C., May 31, 1920. jt.

Mr. J. S. Griffin,
Clerk in Charge of Revaluation Assessment,
Raleigh, North Carolina.

DEAR SIR:

Taxes—Tax Returns—State of North Carolina—Year 1920.

In reply to your letter of the 17th instant, requesting a statement of the value of the Atlantic Coast Line Railroad Co. filed with the Interstate Commerce Commission for the purpose of aiding them in fixing its rate basis so as to arrive at a six per cent return under the Transportation Act of 1920.

Hereto attached please find statement of property investment of
127 the Atlantic Coast Line Railroad Co. and its subsidiaries as filed with the Commission as of Dec. 31, 1919. Also a recapitulation separating the Tampa Southern Railroad, leased property and investment in terminal property used exclusively in producing income for this Company, showing the property investment of the A. C. L. R. R. Co. exclusive of leased lines, etc., on Dec. 31, 1919 to be $184,789,261 or $38,835.47 per mile owned; and May 1, 1919, $183,970,932, or $38,663.49 per mile owned.

Yours truly,

C. J. JOSEPH,
Tax Agent.

Road or System.—Atlantic Coast Line Railroad Company, and subsidiaries, the income of which is included in the Operating Income of the reporting carrier, Form 100.

	A. C. L. R. R. leased lines & interests in terminals, etc.	Leased lines, interests in terminals, etc.	A. C. L. R. R.
Total Property Investment Dec. 31, 1917	$184,944,622		
Improvements on Leased Property	.....	$54,191	
Total Property Investment Dec. 31, 1917 less leased property	.....	.....	$184,890,431
Additions & Betterments, Jan. 1, 1918 to Dec. 31, 1919	5,957,929		
Additions & Betterments on leased property to Dec. 31, 1919	.....	9,160	
Tampa Southern Railroad Co	.....	1,474,302	
Additions & Betterments, Jan. 1, 1918 to Dec. 31, 1919	.....	.....	4,474,467
Estimated Cost of Government Allocated Equipment to date	5,929,875	.....	5,929,875
Leased Property used exclusive of producing income	2,358,027	2,358,027	
Interest in Terminal Property, etc., used in producing income	4,700,081	4,700,081	
	$203,890,534	$8,595,761	$195,294,773
Book Value Material & Supplies, Dec. 31, 1919	5,282,118	.....	5,282,118
	$209,172,652	$8,595,761	$200,576,891
Accrued Depreciation, Dec. 31, 1919	15,787,630	.....	15,787,630
	$193,385,022		$184,789,261
Miles of Road Owned Dec. 31, 1919	4,794.10		4,758.26
Property Investment Per Mile Owned	$40,338.12		$38,835.47

EXHIBIT "C".

Form 102.

PROPERTY INVESTMENT

ROAD OR SYSTEM:—Atlantic Coast Line Railroad Company and subsidiaries, the income of which is included in the Operating Income of the reporting carrier, Form 100.

OWNER CORPORATION (See Note 1.)	PROPERTY INVESTMENT ACCOUNTS DEC. 31, 1917				ADDITIONS AND BETTERMENTS TO PROPERTY JAN. 1, 1918 TO DEC. 31, 1919 (Excluding Allocated Equipment)				
	Miles of Road Owned Dec. 31, 1917	Account 701 Investment in Road and Equipment (See Note 3)	Account 702 Improvements on Leased Railway Property	Total	Miles of Road Owned Dec. 31, 1919	Expenditures By Director General (See Note 2)	Expenditures By Corporation	Total	Grand Total (Col. e plus Col. i.)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
ATLANTIC COAST LINE R. R. CO.	4,704.56	$184,890,431	$ 54,191	$184,944,622	4,758.26	$3,911,270	$ 572,357	$4,483,627	$189,428,249
TAMPA SOUTHERN R. R. CO. (That part of road between Uteca and Palmetto, Fla., not completed, but in operation.)					35.84	----------	1,474,302	1,474,302	1,474,302
TOTAL	4,704.56	$184,890,431	$ 54,191	$184,944,622	4,794.10	$3,911,270	$2,046,659	$5,957,929	$190,902,551
Property used by A. C. L. R. R. Co. exclusively in production of its income, the property investment not being reported by owner:									
Central R. R. of S. C.	40.20	$ 470,000	$----------	$ 470,000					
South Carolina Pacific Ry. Co.	10.56	204,600	----------	204,600					
Tidewater Power Co., Wilmington Dummy Line	1.42	50,000	----------	50,000					
Various owners right of way, Wilmington Dummy Line		33,310	----------	33,310					
Thirteen "Russian" decapod locomotives		650,000	----------	650,000					
Gordan Wharf, Savannah, Ga.		200,000	----------	200,000					
Portion of Savannah, Ga., property United Hydraulic Cotton Press Co.		150,117	----------	150,117					

NOTES AND INSTRUCTION:

(1) The purpose of this form is to obtain information upon the total investment in railway property necessary to produce the operating revenues of the reporting carrier, as shown on Form 100. The respondent should include not only the book value of such property owned by the operating company but also the book value of the property investment of lessor companies, except property investments the rental of which is included in Form 100, and the investment of the operating company in improvements are not reported by the lessor company.

The names of lessor companies should be shown with their mileage and the book value of the

Road or System.—Atlantic Coast Line Railroad Company, and subsidiaries, the income of which is included in the Operating Income of the reporting carrier, Form 100.

Dummy Line	1.42	50,000	.....	50,000
Various owners right of way, Wilmington Dummy Line		33,310	.....	33,310
Thirteen "Russian" decapod locomotives		650,000	.....	650,000
Gordan Wharf, Savannah, Ga.		200,000	.....	200,000
Portion of Savannah, Ga., property United Hydraulic Cotton Press Co.		150,117	.....	150,117
Portion of property of The A. L. & I. Co., at Tampa, Fla.		500,000	.....	500,000
At Brunswick, Ga.		100,000	.....	100,000
TOTAL	52.30	$ 2,358,027	$.....	$ 2,358,027
Proportion of property, investment, based on stock ownership by A. C. L. R. R. Co. of properties used by A. C. L. R. R. Co., in production of its Income, Property Investment not being reported by owner:				
Alabany Passenger Terminal Co.	.17	$ 20,847	$.....	$ 20,847
Atlantic & East Coast Terminal Co.	.....	296,152	.....	296,152
Augusta & Summerville R. R. Co.	.56	32,722	.....	32,722
Augusta Union Station Co.	.26	118,875	.....	118,875
Belt Line Ry. Co.	1.82	416,080	.....	416,080
Charleston Terminal Co.	.....	500,179	.....	500,179
Charleston Union Station Co.	.30	152,150	.....	152,150
Columbia Union Station Co.	.30	75,235	.....	75,235
Goldsboro Union Station Co.	.28	33,810	.....	33,810
Jacksonville Terminal Co.	2.59	750,000	.....	750,000
Norfolk & Portsmouth Belt Line R. R. Co.	.....	162,360	.....	162,360
North Charleston Terminal Co.	.....	35,000	.....	35,000
Richmond Terminal Ry. Co.	1.46	1,499,712	.....	1,499,712
Savannah River Terminal Co.	.....	49,413	.....	49,413
Savannah Union Station Co.	3.71	805,175	.....	805,175
Tampa Union Station Co.	.31	85,650	.....	85,650
Wilmington Ry. Bridge Co.	2.52	166,771	.....	166,771
TOTAL	14.40	$ 4,700,081	$.....	$ 4,700,081
GRAND TOTAL	4,771.16	$191,948,539	$ 54,191	$192,002,730

RECAPITULATION

Total Property Investment Column (e), Dec. 31, 1917	$192,002,730
Additions and Betterments Column (i), Jan. 1, 1918 to Dec. 31, 1919	5,967,929
Estimated Cost of Government Allocated Equipment, Jan. 1, 1918 to date	5,929,875
TOTAL	$203,890,534
Book Value of Material and Supplies at Dec. 31, 1919	$ 5,282,118
TOTAL PROPERTY INVESTMENT, Dec. 31, 1919	$209,172,652
Book Value of Materials and Supplies at Dec. 31, 1917	$ 5,532,629
Book Value of Materials and Supplies at Dec. 31, 1918	$ 5,366,546

ACCURED EPRECIATION, DECEMBER 31, 1919

	Account 775 Road	Account 776 Equipment	Total
On Federal Books	$ 249,215	$ 2,718,564	$ 2,967,779
On Corporate Books not including above	1,665,670	11,154,181	12,819,851
TOTAL	$ 1,914,885	$ 13,872,745	$ 15,787,630

Property retire and not replaced, not credited to investment accounts.....$ None.

h t 12-30-21

page 129

respondent should include not only the book valu of such property owned by the operating company but also the book value of the property investment of lessor companies, except property investment the rental of which is included in Form 100, and the investment of the operating company in improvements are not reported by the lessor company.

The names of lessor companies should be shown with their mileage and the book value of the investment; any improvements by lessee should appear opposite lessee's name in Column (d).

Trackage rights and the property of another operating carrier, part of whose property may be used by the respondent, should not be included in this form.

(2) Include in property investment figures in Column (g) all expenditures made by Federal administration, whether approved by corporation or not, it being understood that use of such figures will not prejudice any claims under the Federal control act.

(3) If any investments in property devoted to transportation service are included in accounts other than 701 and 702, and if the revenues from and the expenses of the reporting carrier, as set forth in the attached Form 100, include the amount of such investments as a separate item under Account 701—Investment in Road and Equipment (Column (c))—and attach explanatory memorandum of the facts.

(4) Show dollars only. Make necessary adjustments to maintain correct totals.

(5) Roads not under Federal control will fill out this blank in the prescribed form so that the result may be tabulated with those roads under Federal control.

Property Investment.

Atlantic Coast Line Railroad Company.

May 1, 1919.

Total Property Investment Dec. 31, 1917, less leased property		$184,890,431
Additions & Betterments Dec. 31, 1917, to May 1st, 1919		4,048,059
Estimated Cost Government Allocated Equipment May 1st, 1919		4,645,500
		$193,583,990
Book Value Material & Supplies May 1st, 1919		5,313,535
		$198,897,525
Accrued Depreciation to May 1, 1919		14,926,523
		$183,970,932
Miles of Road Owned May 1, 1919		4,758.26
Investment Per Mile Owned		$38,663.49

(Here follows table marked page 129.)

130 EXHIBIT "D."

Raleigh, N. C., June 10, 1920.

Mr. C. J. Joseph, Tax Agent,
Atlantic Coast Line Railway,
Wilmington, N. C.

DEAR SIRS:

Under authority conferred upon it by Chapter 84, Public Laws of 1919, the Commission has assessed and valued the property of the Atlantic Coast Line Railway Company at $55,929.629.

If you desire to be heard touching this assessment the Commission will hear you at its office in Raleigh any day within ten days from the date hereof.

Please bear in mind—

That the above valuation is intended to represent the actual cash value of the property on the first day of May, 1919. That all other property of every kind and nature in the State is being assessed upon the same basis;

That the valuation as above is not to be used for tax purposes until 1920;

That all tax rates are to be cut with relation to the total increase in property valuations before the valuations as above are adopted for tax purposes, and

That the tax rates are to be so cut that the total taxes collected by the State, by the County and for each special tax district cannot exceed an increase of ten per cent of the taxes collected for the year 1919.

Yours very truly, J. S. GRIFFIN,
Clerk in Charge Revaluation Assessment.

G.-E.

EXHIBIT "E."

Wilmington, N. C., July 19, 1920. ds.

North Carolina Corporation Commission,
Raleigh, North Carolina.

Assessment of Atlantic Coast Line Railroad Company's Property in North Carolina by the North Carolina Corporation Commission as of May 1st, 1919, for the year 1920.

GENTLEMEN:

131 Referring to the conference between your Board and Mr. C. J. Joseph, Tax Agent of this Company, and myself, in Raleigh. on the 16th, in regard to the assessment of the Atlantic Coast Line Railroad Company for taxes for 1920 as of May 1st, 1919:

It is the desire of this Company, as it has always been, to endeavor as far as possible to reach an amicable agreement with your honorable board upon all questions of difference arising between us, but it is

necessary that we formally protest against the assessment for the next four years of our property at $50,867,800.00, which you advise is the figure you have arrived at.

In discussing this matter with the Commission we have laid before your Board all the figures and accounts which we have and every basis upon which it is possible in my opinion to value this property.

I do not think it is fair to the railroads to take the four years of 1915, 1916, 1917 and 1918, in order to arrive at an earning basis for the reason that, as you gentlemen know, and as I have informed you again, wages of all kinds were increased by the Government as of January 1st, 1919, and, in addition to this, materials and supplies of all grades were increased during the year 1919, and this increase was so heavy that you will find it reflected materially in the revenue of the railroads, especially of this company.

The operating ratio for the year 1919 was 84.18, while for 1918 it was 74.86, and for 1917, 67.57, as you will see from the statements we have filed with you. The net operating revenue for 1919 for North Carolina is $2,087,975.05 as against $3,204,840.23 for 1918, showing a decrease in 1919 of $1,116,865.18. For this reason and for the further reason that from all indications these extraordinary wages and expenses will continue for several years to come, we think that the year 1919 should be used with the four years prior thereto in order to arrive at a proper net average. In addition to this, the statute provides that the assessment shall be based upon property as of May 1st, 1919, and, therefore, certainly all, or a portion of 1919, should be used in order to get at the value as of May 1st, 1919. The value of the Atlantic Coast Line Railroad Company's property in North Carolina based upon average net earnings, less taxes, in North Carolina, for the five years, from 1915 to 1919, inclusive, capitalized at 6%, would be $45,197,459.00. The same value based upon average net earnings, less taxes, in North Carolina, for the four years 1915 to 1918, inclusive, capitalized at 6%, would be $47,796,928.00, and the average of the above calculation amounts to $46,497,193.00.

I appreciate the fact that you have many difficulties in assessing the properties of the various railroads in this State and in
132 endeavoring to equalize them. You will note from the figures which you have on file, and from those which we have furnished you that the earnings of the Atlantic Coast Line Railroad Company in North Carolina per mile are considerably less than the earnings of the other large roads. The figures which I have given you herein for our Company are the highest that I can figure on a reasonable basis. I understood from you gentlemen in the conversation we had with you on Friday, the 16th, that your assessment was an arbitrary assessment based upon the earning capacity plus an arbitrary amount added. We cannot feel that this is a constitutional method of assessment, and on behalf of the Atlantic Coast Line Railroad Company, therefore, I respectfully enter a protest against the same.

I will thank you to kindly acknowledge receipt of this letter and advise me of your action as early as possible.

Yours very truly,

THOMAS W. DAVIS,
Assistant General Counsel.

133 EXHIBIT "F."

Atlantic Coast Line Railroad Company.

Statement Showing Gross Operating Revenue, Operating Expenses and Taxes, and Net Operating Revenue, Less Taxes, for Years 1915, 1916, 1917, and 1918, and Average of said Items for the Respective Years Named.

Entire Line.

Year.	Gross operating revenue.	Operating expenses and taxes.	Net operating revenue less taxes.
1915	$31,936,962.03	$23,731,333.79	$8,205,628.24
1916	37,322,085.42	25,904,015.30	11,418,070.12
1917	44,063,331.25	32,037,994.91	12,025,336.34
1918	56,992,329.24	45,158,302.38	11,834,026.86
	$170,314,707.94	$126,831,646.38	$43,483,061.56
Average ...	$42,578,676.98	$31,707,911.59	$10,870,765.29
Net Operating Revenue, less Taxes, Capitalized at 6%			$181,179,422.00
21.928% of $181,179,422.00 on Operated Mileage Basis			$39,729,023.66

Average Operating Miles.

Year.	Entire system.	North Carolina.
1915	4,700.03	1,039.13
1916	4,727.55	1,040.15
1917	4,780.64	1,047.36
1918	4,820.05	1,046.03
Total 4 years	19,028.27	4,172.67
Average	4,757.07	1,043.17
North Carolina's Percentage		21.928%

134 EXHIBIT "G."

Wilmington, N. C., August 15, 1921. ds.t.

Hon. A. D. Watts,
Commissioner of Revenue,
Raleigh, North Carolina.

Subject: North Carolina Taxes—Request for Reduction in Assessment.

DEAR SIR:

Supplementing my letter of August 13th in which I outlined to you our protest against the valuation and assessment of the property of the Atlantic Coast Line Railroad Company as fixed by you for the year 1921, and in support of our request for a reduction, I beg to call your attention to the following definite facts which were not specifically called to your attention in that letter:

Section 64 of the Machinery Act provides the method of fixing the valuation of tangible and intangible property.

Section 64 (*a*) provides the method by which you shall determine the valuation of tangible property of the railroad companies, and, among other things, provides:

"This value should be determined by a due consideration of the actual cost of replacing the property, with a just allowance for depreciation on rolling stock, and also of other conditions, to be considered as in the case or private property."

In view of the constitutional provision that taxes shall be uniform it was the evident intention of the legislature that the real property of railroads should be assessed and valued upon the same basis as real property of private persons and corporations, else the words "and also of other conditions, to be considered as in the case of private property," would not have been inserted in section 64 of the Machinery Act.

As being conclusive of the construction for which we contend, your attention is called to the fact, for instance, that the assessment of real property in Nash County, for 1920, was $36,300,096, and the rate was 44 cents per $100. The assessment in Nash County for 1921, however, was horizontally reduced 50%, making the total assessed real property in Nash County in 1921, $18,150,048. The tax rate in Nash County for 1921 is 92 cents per $100. If the assessment upon the real property in Nash County of the Atlantic Coast Line Railroad Company, for 1921, is left at the same figures as it was in 1920, it will result in the Atlantic Coast Line Railroad Company a tax rate of 92 cents upon each $100 upon property valued 100% higher than the property owned by private individuals. In
135 other words, the assessment of the real property of the Atlantic Coast Line Railroad Company in Nash County as fixed by you, for 1921, is $1,514,269.37 and the roadway property is

$118,600.00, making a total of these two items, $1,622,869.37. While this railroad company under the assessment fixed by you would have to pay tax upon this amount at the rate of 92 cents per $100 the individual owners of real estate holding the same amount of property would pay just one half of this amount. This you can easily see is unequal taxation and is confiscation of our property which is not allowed by the constitution and laws of this state.

Yours very truly,

THOS. W. DAVIS,
Assistant General Counsel.

EXHIBIT "H."

Wilmington, N. C., August 13, 1921. ds.t.

Hon. A. D. Watts,
Commissioner of Revenue,
Raleigh, North Carolina.

Subject: North Carolina Taxes—Request for Reduction in Assessment.

DEAR SIR:

In support of the contention of the Atlantic Coast Line Railroad Company that it is entitled to a reduction in the valuation of its property this year, I beg to submit the following facts:

First. The General Assembly, in the session of 1921, provided for a review of the valuation of real property, and reduc*duc*tions in valuations, (Section 28, et seq. Machinery Act.) In nearly all the counties through which this railroad operates horizontal reductions in the valuation of real property have been made by the local assessors, under authority of the State Board of Equalization. Section 64 of the Machinery Act provides that you must find the value of all the property of the railroads, including tangible and intangibl- property, but that the latter must be assessed separately. The Act provides that the value of the franchise shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public, (the value of the physical property being deducted), as evidenced by the market value of the capital stock certificates of indebtedness, bonds or other securities,
136 the value of which is based upon the earning capacity of the property. In June the Atlantic Coast Line Railroad Company filed with you exhibits showing the true valuation of its property, according to the tax laws of North Carolina. These exhibits showed the *the* aggregate value of this Company's property based upon the value of its stocks and bonds, and also upon its earning capacity.

The valuation placed upon this company's property by the Tax Commission last year was $50,867,800, of which $39,620,930 was tangible property ascertained by finding the total cost and investment

account of the Atlantic Coast Line Railroad Company for all of the states and allocating North Carolina's proportion on a mileage basis, and deducting the amount so found—that is, $39,620,930, from the total valuation fixed by the commission, leaving an intangible value of $11,246,870.

The assessment and valuation found by you for this year is the same as fixed by the Commission for the year 1920, and I assume, of course, that it was based upon the same figures as above recited.

We respectfully contend that the tangible valuation and the total valuation should not be the same as last year, because if it was based upon the method above outlined, the value as of May 1st, 1921, would be substantially reduced.

The assessed valuation of the tangible and intangible property of this Company for the year 1920, was $50,867,800. The earnings of the company in the State of North Carolina, capitalized at 6%, amounted to $41,730,199. The value of the stocks and bonds, par value, allocated to North Carolina, on mileage basis, amounts to $41,-150,361, the par value being $100, and the market value being upon the stock $81 per share and for the bonds $78 per $100, and if the value of the stocks and bonds allocated to North Carolina, on mileage basis, was figured on the market value, as the statute provides, it would be much less than $41,150,361.

If the value is to be determined upon the capitalization of the earnings, the value of this Company's property would be $41,730,199 or $2,109,269 more than the assessed value of the tangible property for the year 1920, which would be the intangible valuation.

If it is to be assessed upon the value of its stocks and bonds, without deducting the large amount of money invested by this company in other states in costly terminals, none of which are in use in North Carolina, or properly chargeable to North Carolina, the value would be $41,150,361, or $1,529,432 more than the assessed value of the tangible property for the year 1920, the latter figures of
137 which, upon this basis, would be the *the* correct value of the intangible property.

So that, even if the tangible property of this company was assessed for the year 1921 at $39,620,930, the amount for which it was assessed in 1920, the intangible assessed valuation should not in any event be greater than $2,109,269.

Upon the other hand, if the Commissioner determines, in capitalizing the earnings at 6%, the compensation paid this company by the Federal government should be the measure of the earnings, without deductions for corporate expenses or taxes, then the valuation of this company's property, tangible and intangible, would be $36,227,090, or $3,393,840 less than the assessed value of the tangible property for the year 1920.

But, as the Legislature of 1921 authorized a horizontal reduction in real estate in the various counties in the State, and as the State Board of Equalization, by resolution adopted at its meeting on June 15th, 1921, copies of which were sent by the Commissioner of Revenue to the clerks of the various boards of county commissioners, approved the resolutions of the various county boards, making hori-

zontal reductions in *in* real property in such counties, the railroad companies in this state are entitled to have the same reductions in the value of their real property as *was* made in said counties, and the Atlantic Coast Line Railroad Company protests against any assessment against its property which does not give *it to* the same reduction in real property as allowed to the real property owners in the counties in which its railroad operates.

Taking the assessed value of the entire property of the Atlantic Coast Line Railroad Company, for the year 1920, $50,867,800, there should first be deducted the intangible property, $11,246,870, and the amount of the rolling stock, $6,659,023, amounting to $17,905,893, this would leave the real property at $32,961,907, and from this real property there should then be deducted $1,598,577, the real property which was assessed locally, and which has already received its horiontal reduction, in accordance with the statute, and this would leave the real property, assessed by you, $31,363,330.

We contend that we should have the same horizontal reduction applied to this real property as was applied to the owners of the real property in the counties through which the Atlantic Coast Line Railroad Company runs in North Carolina. In arriving at this percentage the proportionate amount of $31,363,330 should be allocated to each county on mileage basis, and that proportion allocated to each county should be reduced by the horizontal percentage reduction allowed in each county through which this railroad runs.

138 This would then leave the real property of this company assessed by you, but reduced as above, $25,638,617, which we claim and contend is the highest amount which under the law you are entitled to assess the property of this company.

For your information, and for the record in this case, I attach hereto a memorandum, Exhibit 1, showing the assessed value of the property for 1920 throughout the counties in which this railroad runs, including the amount of taxes paid on 1920 rates, the percentage reductions authorized, the valuation in these counties on the reduced percentages in 1921, a copy of this having heretofore been filed with you.

I also hand you two sheets, marked Exhibit 2, showing the method of arriving at the valuation of this company's property upon the basis of capitalization of earnings, Federal compensation and stocks and bonds.

Exhibit 3. Statement showing investment account, Federal compensation, and capitalizaton upon Federal compensation, capitalization upon the earnings, and allocation of the stocks and bonds.

I also hand you Exhibit 4, which gives in detail the ass-ssment of 1921 of this company's property allocated to each county and town, and the same assessment arrived at by percentage reduction on the real estate pro-rated per mile.

In addition to this, I hand you Exhibit 5, showing the calculations set forth in this letter, the value of our property, the value per mile of both real and personal, the rolling stock, etc., which sheets give you the various methods of figuring the value of the property as

EXHIBIT NO. 1.

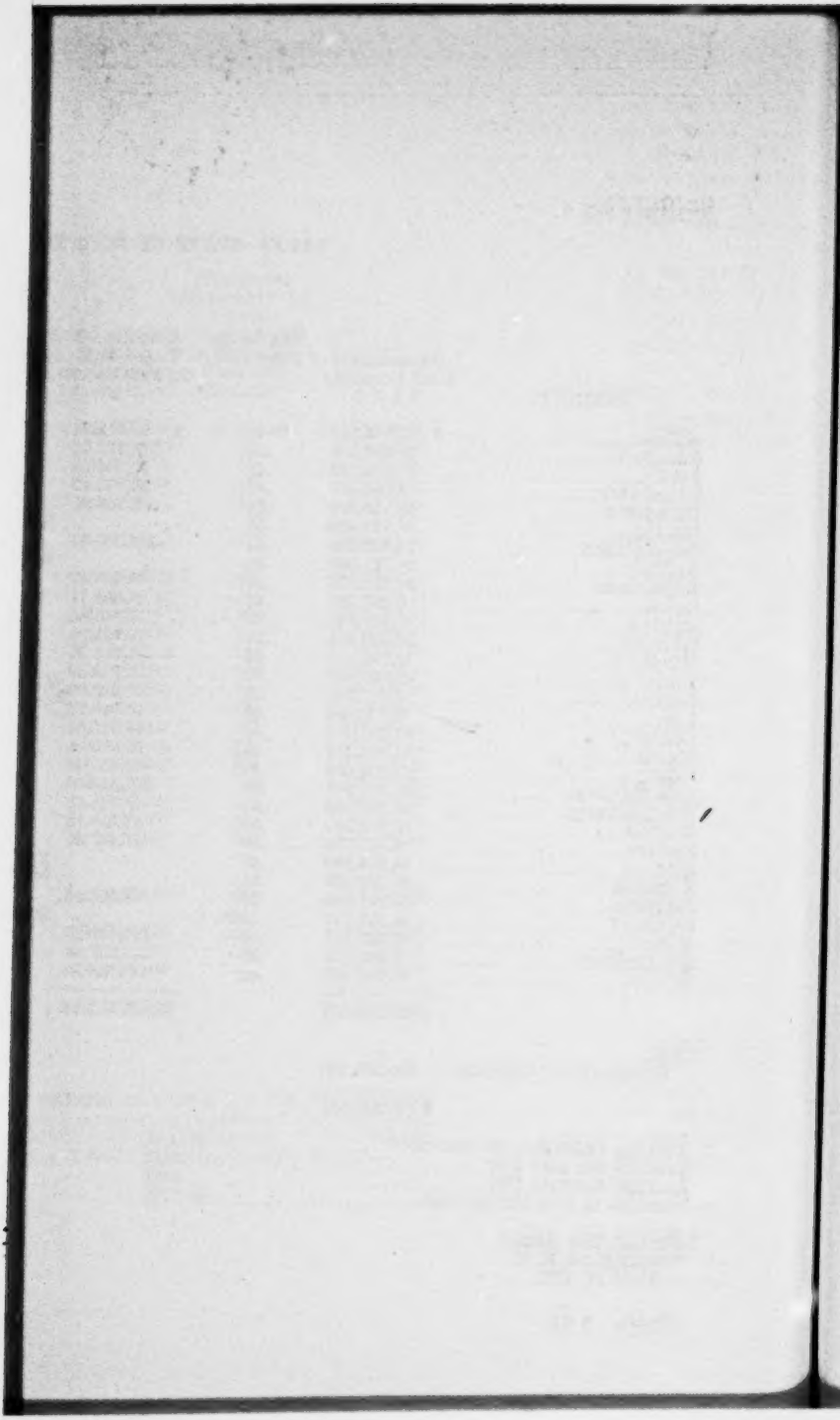
TAXES—STATE OF NORTH CAROLINA

COUNTY	Assessment Real Property 1920	Tax Rates Paid 1920	Amount of Taxes Paid on 1920 Rates	Percentages of Reduction Authorized by State	Valuation 1921 on Reduced Percentages	Tax Rates Necessary to Provide Equivalent in Taxes on Reduced Valuation	
Anson	$ 13,894,811	$0.40	$ 55,539.24	20%	$ 10,707,849	$0.50	$ 53,539.24
Beaufort	29,207,006	.59	172,321.34	25%	21,905,255	.79	172,321.34
Bertie	13,958,782	.47	65,606.28	25%	10,469,087	.63	65,606.28
Brunswick	7,953,027	.47	37,379.23	None	7,953,027	.47	37,379.23
Craven	28,745,458	.56	82,108.99	None	15,789,229	.52	82,108.99
Cumberland	20,522,089	.61	125,184.44	Revaluation 10%	18,469,880	.67½	125,184.44
Duplin	24,211,549	.41		Revaluation			
Edgecombe	34,955,056	.257	89,834.49	50%	17,477,528	.51	89,834.49
Gates	5,631,242	.46	25,903.71	10%	5,068,118	.51	25,903.71
Halifax	35,636,872	.76	270,840.23	40%	21,382,124	1.26⅔	270,840.23
Harnett	20,823,234	.34	70,798.99	None	20,823,234	.34	70,798.99
Hertford	10,747,168	.39	41,913.95	33⅓%	7,164,779	.59	41,913.95
Johnston	42,060,148	.26	109,278.38	33⅓%	28,020,099	.39	109,278.38
Jones	8,447,940	.32	27,033.09	30%	5,631,893	.48	27,033.09
Lee	8,706,469	.46	40,049.76	33⅓%	5,804,313	.69	40,049.76
Lenoir	33,857,010	.44	148,970.84	25%	25,392,757	.59	148,970.84
Martin	15,613,311	.40⅓	62,983.68	33⅓%	10,408,874	.61	62,983.68
Nash	36,300,096	.44	159,720.42	50%	18,150,048	.88	159,720.42
New Hanover	37,517,377	.60	225,104.20	None	37,517,377	.60	225,104.20
Northampton	12,367,534	.51	63,074.42	33⅓%	8,245,023	.77	63,074.42
Onslow	10,907,997	.44	47,555.18	20%	8,646,397	.55	47,555.18
Pender	8,492,798	.50	42,463.99	25%	6,369,599	.66⅔	42,463.99
Pitt	44,254,598	.43		Revaluation			
Robeson	48,024,999	.34		Revaluation			
Sampson	22,717,990	.37	84,056.56	25%	17,038,492	.49	84,056.56
Scotland	21,319,716	.1542		Revaluation			
Wayne	47,323,132	.32	151,434.02	33⅓%	31,548,755	.48	151,434.02
Washington	7,468,873	.56	41,825.69	25%	5,601,654	.75	41,825.69
Wilson	40,401,300	.46	185,845.98	33⅓%	26,934,200		185,845.98
	$ 707,216,601		$2,424,822.10		$ 392,519,547		$2,424,822.10
LESS: "Revaluation" Counties	166,556,260						
	$ 540,660,341						

Average reduction in valuation.....27.40%
Average tax rate 1920......4485
Average tax rate 1921......6177
Increase in average tax rate.....37.77%

NOTE: The assessments as shown for the year 1920 are taken from the report of the State Tax Commission on Revaluation to His Excellency, T. W. Bickett, Governor of North Carolina, August 10, 1920.

Office of Tax Agent,
Wilmington, N. C.
June 21, 1921.



heretofore outlined, and upon which we claim should be the assessed value of this company's property.

I call your attention to the following cases, under which we claim these reductions and equalization of our property.

Washington Water Power Company v. Koteenie County, 270 Federal 369, Advance Sheets, April 21, 1921,
Green v. Railroad, 244 U. S. 501,
Cummings v. National Bank, 101 U. S. 153,
Taylor v. L. L. N. Railroad, 88 Federal 350.

Yours very truly,

THOS. W. DAVIS,
Assistant General Counsel.

(Here follows table marked page 139.)

140 EXHIBIT No. 2.

Atlantic Coast Line Railroad Company, State of North Carolina, Year 1921.

Tangible Property.

The State Tax Commission, year 1920, required the Railroads whose Interstate Commerce Commission valuation- have not been completed to file with them a copy of their investment accounts to be used for determining the amount of returns they are entitled to earn on their properties.

The Atlantic Coast Line is one of the corporations whose valuation was not completed (and is not up to date), filed with the Tax Commission a copy of their investment account. The Tax Commission assessed the tangible property of this Company by allocating to North Carolina, on a basis of mileage owned, the investment in Road and Equipment, less accrued depreciation, as shown in the statement filed with the Interstate Commission, thereby assessing the tangible property in North Carolina at the average cost per mile of the entire system, making no deduction on account of large and costly terminals at Pinners Point, Virginia, Charleston, S. C., Savannah and Brunswick, Ga., Jacksonville and Tampa, Florida, etc., causing a greater excess value per mile of line outside of this state as compared with those inside. The assessed value or reproductive value shows the cost instead of the present value and worth. The amount of returns a corporation is allowed to earn upon its property is based on what is put into the property as investment value, while taxes are largely based upon what is taken out as income.

This Company returned its tangible property to the State Tax Commission for the year 1920 at a valuation of $32,188,328. which was 102.56 per cent more than it was assessed by the Commission, year 1919. The Commission assessed the tangible property year 1920 at a valuation of $39,620,930, or 140.33 per cent more than assessed by them in 1919, when the Investment in Road and Equipment to December 31st, 1920, distributed to North Carolina on a basis of mileage owned was $39,639,547, or $18,617 more than assessed, showing that the assessed value of the tangible property is the actual cost of the property less accrued depreciation.

Tangible and Intangible Property.

Under the law the Railroads must be taxed as an indivisible unit, successful corporations have a franchise or intangible valua-
141 tion which shall be determined by due consideration of the gross earnings as compared with the operating expenses, and particularly by consideration of the value placed upon the whole property by the public (the value of the physical property being deducted), as evidenced by the market value of all capital stock, certificates of indebtedness, bonds, or any other securities, the value of which is based upon the earning capacity of the property.

Federal Compensation.

The United States Government took over the control of this Company's property January 1st, 1918, and operated same to March 1st, 1920. The yearly compensation paid for the use of this Company's property was $10,180,915.15, from this amount the expenses and taxes of the Corporate Company were deducted, the result was capitalized as six per cent and distributed to the State of North Carolina on the proportion of mileage operated in the state; this would give the State the real value of the operative property. The average for two years would be $34,531,726.

If the Compensation paid by the Government for the use of the property was capitalized at six per cent, without taking the Corporate Company's expenses and taxes, and allocated to North Carolina on a basis of mileage operated the valuation would be $36,227,090.00 or $3,393,840 less than the assessed value of the tangible property year 1920.

Capitalization of Earnings.

Take the average Net Operating Revenue, less Taxes, for the last five years, 1916 to 1920, inclusive, in the State of North Carolina as shown in the annual Reports to the Corporation Commission and capitalize at six per cent, the valuation would be $41,730,199.00 or $2,109,269.00 more than the assessed value of the tangible property year 1920.

Stocks and Bonds.

The stocks and bonds of a Railroad Company represents the value of all property of the Company whether devoted to operations or not; lands, real estate, manufacturing plants, compress warehouses, stocks and bonds of other companies, etc. The corporate money value of a Railroad Company and the money value incorporated in the property devoted to operation are two different magnitudes, sometimes differing quantitively by millions of dollars. No deductions are made on account of the large and costly terminals at Pinners Point, Virginia, Charleston, S. C., Savannah and Brunswick, Ga., Jacksonville and Tampa, Florida, causing a great excess value per
142 mile of line outside of this state as compared with those inside. Without the above deductions the stocks and bonds and notes allocated to North Carolina on a basis of miles owned would give us a valuation of $41,150,361.90 or $1,529,432.00 more than the assessed value of the tangible property year 1920.

If the Commissioner of Revenue assessed the tangible property of this Company, for the year 1921, at the same valuation as assessed year 1920, viz: $39,620,930.00, the intangible assessed valuation should not be greater than $2,109,269.00 as shown in the capitalization of the average net earning less taxes for the last five years, capitalized at six per cent. If we take the Stock and Bonds plan at par

value (when we should use the market value which shows its stock is worth 81 and its General Mortgage bonds are 78) and distribute the aggregate value to North Carolina on a basis of miles owned, the assessed value of the tangible and intangible property should be $41,150,362.00, deducting the tangible assessed value year 1920, viz: $39,620,930, we have the assessed value of the intangible property at $1,529,432.

We respectfully request that if the tangible property is assessed year 1921 at the same valuation as assessed year 1920, that the franchise or intangible property be assessed at a valuation not greater than $2,109,269.00, making the aggregate assessed value of the tangible and intangible property $41,730,199.

Office of Tax Agent, June 13, 1921. jt. Wilmington, N. C.

143 EXHIBIT 3.

Atlantic Coast Line Railroad Company, State of North Carolina, Year 1921.

The State Tax Commission assessed the valuation of this Company's tangible property, for the year 1920, at $39,620,930.00; intangible property at $11,246,870.00, aggregate assessed valuation at $50,867,800.00.

Investment.

According to the annual report for the year ending December 31, 1920, of the Board of Directors to the Stockholders of the Company, the investment in Road and Equipment of the entire system, less accrued depreciation, distributed to the State of North Carolina on the basis of miles owned, is $39,639,547.96, as follows:

Investment in Road & Equipment, Dec. 31, 1920		$197,463,730.25
Accrued Depreciation, Dec. 31, 1920		16,238,932.91
		$181,224,797.34
Miles of Road Owned Dec. 31, 1920		4,750.85
Investment Per Mile Owned		$38,145.76
Miles of Road Owned in North Carolina, Dec. 31, 1920		1,039.16
Investment in North Carolina on Mileage Basis		$39,639,547.96

Federal Compensation.

The annual compensation guaranteed this Company under Section 1 of the Federal Control Act is herewith shown. This compensation (based upon the earnings for the three years), less corporate expenses and taxes, capitalized at six per cent and distributed to North Carolina on a basis of operation mileage would give the state the real value of the operative property based upon earnings during Federal Control.

	Year 1918.	Year 1919.
Annual Compensation under Federal Control Act	$10,180,915.15	$10,180,915.15
Corporate Expenses and Taxes	470,607.80	595,993.49
	$9,710,307.35	$9,584,921.66
Capitalized at Six Per Cent	$161,838,454.00	$159,748,694.00
Miles Operated, Entire System	4,839.76	4,893.65
Miles Operated in North Carolina	1,145.72	1,044.76
North Carolina's Proportion of Miles Operated	21.60%	21.35%
North Carolina's Proportion	$34,957,106.00	$34,106,346.00

Capitalization of Earnings.

If the assessment of this Company's property in North Carolina was made upon the average net operating revenue, less taxes, for the last five years, as shown in the North Carolina Corporation Commission's Reports, and capitalized at six per cent, the assessed value should be as follows:

Year.	Operating revenue.	Operating expenses.	Net operating revenue.	Taxes.	Net operating revenue, less taxes.
1916 ...	$10,217,647.65	$6,587,793.71	$3,629,853.94	$468,811.78	$3,161,042.16
1917 ...	11,584,617.49	7,827,881.00	3,756,736.49	487,028.01	3,269,708.48
1918 ...	14,816,308.86	11,092,458.61	3,723,850.25	519,010.02	3,204,840.23
1919 ...	17,376,471.19	14,605,475.72	2,770,995.47	683,020.42	2,087,975.05
1920 ...	18,623,284.36	17,334,790.66	1,288,443.70	492,949.92	795,493.78
					$12,519,060.70
Average Net Operating Revenue, less taxes					$2,503,811.94
Capitalized at six per cent					41,730,199.00

Stocks and Bonds.

If the assessment of this Company's property in North Carolina was made upon the par value of its capitalization and allo-
144 cated to North Carolina on a basis of miles owned, the assessed values should be as follows:

Par Value of the Stocks and Bonds Are *Used When the Market Value of Its Stock on May* 1, 1921, *Was* 81 *and Its General Unified Mortgage Bonds Were* 78.

Capital Stock	$68,782,900.00
Mortgage Bonds	102,124,000.00
Income Bonds	15,000.00
Miscellaneous Obligations	4,580,555.00
Trust Bonds	6,629,500.00
Notes	6,000,000.00
	$188,131,955.00
Miles of Road Owned December 31, 1920	4,750.85
Average Value Per Mile	$39,599.64
Miles Owned in North Carolina, December 31, 1920	1,039.76
Value in North Carolina on Mileage Basis	$41,150,361.90

Office of Tax Agent, June 7, 1921-jt.

(Here follow tables marked pages 145 and 146.)

Personal Property				
Local Property				
	197,711.88		[illegible]	[illegible]
WAYNE:				
39.28 Miles				
Roadway Property	1,973,473.75	Less 33⅓-16⅔%	986,736.88	1,628,729.53
Personal Property	66,200.00	Less 33⅓-16⅔%	33,100.00	55,127.00
Local Property			748,212.44	748,212.44
	5,553.00		5,553.00	5,553.00
	2,045,226.75		1,687,970.42	1,804,652.97
WILSON:				
31.44 Miles				
Roadway Property	1,579,582.90	Less 33⅓ & 10%	684,919.26	803,367.62
Personal Property	84,600.00		74,088.00	74,088.00
Local Property			532,472.32	532,473.32
	20,050.00		20,050.00	20,050.00
	$ 1,684,322.90		$ 1,371,529.58	$ 1,480,007.94

8-9-21 mt

PERCENTAGE OF REDUCTION AS MADE IN THE VARIOUS COUNTIES

Anson, 20% General, 10% for Towns of Morven, McFarlan and Wadesboro,
Beaufort, 25%.
Bertie, 25%.
Brunswick, None,
Columbus, None,
Cumberland, 10%.
Craven, Revaluation, None,
Duplin, Revaluation, None,
Edgecombe, 50% General, 20% Rocky Mount, 25% for Towns of Conetoe, Princeville, Tarboro and Whitakers,
Gates, 10%.
Halifax, 40%.
Harnett, None,
Hertford, 33⅓%.
Johnston, 33⅓%.
Jones, 20%.
Lee, 33⅓%.
Lenoir, 25%.
Martin, 33⅓%.
Nash, 50% General, 25% Rocky Mount, 20% for Towns of Battleboro, Nashville, Sharpsburg and Spring Hope,
New Hanover, None,
Northampton, 33⅓%.
Onslow, 20%.
Pender, 25%.
Pitt, Revaluation, None,
Robeson, Revaluation, None,
Sampson, 25%.
Scotland, Revaluation, None,
Washington, 25%.
Wayne, 33⅓% General, 16⅔% for Towns of Fremont, Goldsboro, Mt. Olive and Pikeville,
Wilson, 33⅓% General, 10% for Towns of Wilson and Elm City.

Office of Tax Agent,
Wilmington, N. C.,
August 9, 1921.

Stocks and Bonds.

If the assessment of this Company's property in North Carolina was made upon the par value of its capitalization and allo-
144 cated to North Carolina on a basis of miles owned, the assessed values should be as follows:

Par Value of the Stocks and Bonds Are *Used When the Market Value of Its Stock on May* 1, 1921, *Was* 81 *and Its General Unified Mortgage Bonds Were* 78.

Capital Stock	$68,782,900.00
Mortgage Bonds	102,124,000.00
Income Bonds	15,000.00
Miscellaneous Obligations	4,580,555.00
Trust Bonds	6,629,500.00
Notes	6,000,000.00
	$188,131,955.00

Miles of Road Owned December 31, 1920	4,750.85
Average Value Per Mile	$39,599.64
Miles Owned in North Carolina, December 31, 1920	1,039.76
Value in North Carolina on Mileage Basis	$41,150,361.90

Office of Tax Agent, June 7, 1921-jt.

(Here follow tables marked pages 145 and 146.)

EXHIBIT 4

ATLANTIC COAST LINE RAILROAD COMPANY
TAXES—STATE OF NORTH CAROLINA—1921

	1 1921 Assessment		2 1921 Assessment Arrived at with Percentage Reduction on Real Property	3 1921 Assessment with Percentage Reductions Prorated Per Mile
Total Valuation	$50,687,800.00		$45,143,097.31	$45,143,097.31
Valuation of Property listed locally	1,598,577.00		1,598,577.00	1,598,577.00
	49,289,223.00		43,544,510.31	43,544,510.31
Roadway Property in Incorporated Towns	1,530,550.00		1,358,375.00	1,358,375.00
	47,758,673.00		42,186,135.31	42,186,135.31
PERSONAL PROPERTY:				
Intangible $11,246,870.00				
Rolling Stock 6,659,023.00			17,905,893.00	17,905,893.00
			24,280,242.31	24,280,242.31
950.19 miles at $50,241.18 per mile	$47,758,673.00			
Personal Property Per Mile			18,844.53	18,844.53
Real Property Per Mile				25,553.05
COUNTIES:				
ANSON:				
14.01 miles				
Roadway Property	703,879.13	Less 20 & 10%	364,102.17	357,997.66
Personal Property	9,640.00	Less 20 & 10%	8,676.00	8,676.00
Local Property			264,012.15	264,012.15
	21,500.00		21,500.00	21,500.00
	735,019.13		658,290.32	652,186.03
BEAUFORT:				
6.60 Miles				
Roadway Property	231,591.99	Less 25%	155,413.34	168,649.78
Personal Property	32,525.00	Less 25%	24,394.00	24,394.00
Local Property			124,374.20	124,374.20
	2,925.00		2,925.00	2,925.00
	267,041.99		307,106.54	320,342.98
BERTIE:				
12.95 Miles				
Roadway Property	650,623.48	Less 25%	304,939.88	330,911.65
Personal Property	7,205.00	Less 25%	5,404.00	5,404.00
Local Property			244,036.98	244,036.98
	607,828.48		554,380.86	580,352.63
BRUNSWICK:				
18.2 Miles				

COLUMBUS:				
75.31 Miles	3,783,663.46	None	2,804,421.60	1,804,289.85
Roadway Property	42,695.00		42,695.00	42,695.00
Personal Property			1,419,181.86	1,419,181.86
Local Property	500.00		500.00	500.00
	3,826,848.46		3,826,848.46	3,306,766.71
CRAVEN:				
9.40 Miles	476,789.00	Revaluation no deduction	297,954.11	242,498.10
Roadway Property	59,475.00		59,475.00	59,475.00
Personal			178,834.89	178,834.89
Local Property	29,550.00		29,550.00	29,550.00
	565,814.00		565,814.00	510,357.99
CUMBERLAND:				
97.07 Miles	2,807,284.34	Less 10%	1,612,626.04	1,456,312.21
Roadway Property	105,058.00	Less 10%	94,548.00	94,548.00
Personal Property			1,075,457.63	1,075,457.63
Local Property	38,613.00		38,613.00	38,613.00
	3,010,930.34		2,821,244.67	2,666,930.84
DUPLIN:				
37.27 Miles	1,872,488.99	Revaluation no deduction	1,170,153.06	962,361.82
Roadway Property	23,790.00		23,790.00	23,790.00
Personal Property			702,335.93	702,335.93
Local Property	26,735.00		26,735.00	26,735.00
	1,923,013.99		1,923,013.99	1,705,222.75
EDGECOMBE:				
44.40 Miles	$ 2,230,708.59	Less 50, 25 & 20%	$ 799,095.66	$ 1,134,555.07
Roadway Property	80,655.00	Less 50, 25 & 20%	62,575.00	62,575.00
Personal Property			536,697.43	536,697.43
Local Property	521,132.00		521,132.00	521,132.00
	2,832,495.59		2,219,500.09	2,554,959.50
GATES:				
14.98 Miles	750,101.01	Less 10%	421,876.70	381,506.69
Roadway Property				
Personal Property			281,349.13	281,349.13
Local Property	25.00		25.00	25.00
	750,126.01		703,250.83	662,880.82
HALIFAX:				
60.59 Miles	3,044,113.30	Less 40%	1,141,393.75	1,548,256.95
Roadway Property	63,525.00	Less 40%	38,115.00	38,115.00
Personal Property			1,141,790.38	1,141,790.38
Local Property	20,581.00		20,581.00	20,581.00
	3,128,169.30		2,341,880.13	2,748,695.33
HARNETT:				
22.99 Miles	1,155,044.96	None	721,908.88	597,464.27
Roadway Property	23,450.00		23,450.00	23,450.00
Personal Property			433,236.05	433,236.05
Local Property	200.00		200.00	200.00
	1,178,694.96		1,178,694.93	1,044,350.32
HERTFORD:				
14.71 Miles	739,047.96	Less 33⅓%	307,896.41	375,885.02
Roadway Property	25,600.00	Less 33⅓%	17,067.00	17,067.00
Personal Property			277,208.34	277,208.34
Local Property				
	764,647.96		602,166.75	670,155.36
JOHNSTON:				
43.10 Miles	2,165,895.20	Less 33⅓%	902,130.44	1,101,336.11
Roadway Property	35,442.00		23,628.00	23,628.00
Personal Property			812,199.54	812,199.54
	2,200,837.20		1,737,957.98	1,937,163.65
JONES:				
12.17 Miles	643,584.89	Less 30%	281,094.13	226,823.16
Roadway Property	3,750.00	Less 30%	2,625.00	2,625.00
Personal Property			241,021.84	241,021. 4
Local Property				
	646,334.89		524,740.97	570,470.00
LEE:				
8.31 Miles	417,504.41	Less 33⅓%	178,937.38	212,345.50
Roadway Property	4,700.00	Less 33⅓%	3,133.00	3,133.00
Personal Property			156,598.34	156,598.34
Local Property	833.00		833.00	833.00
	423,037.41		334,501.72	372,909.84
LENOIR:				
11.03 Miles	554,160.42	Less 25%	259,728.71	281,949.79
Roadway Property	25,025.00	Less 25%	18,769.00	18,769.00
Personal Property			207,855.47	207,855.47
Local Property				
	579,185.42		486,353.18	508,474.26
MARTIN:				
58.71 Miles	2,648,212.80	Less 33⅓%	1,103,278.21	1,346,900.92
Roadway Property	22,825.00	Less 33⅓%	15,217.00	15,217.00
Personal Property			993,295.48	993,295.48
Local Property				
	2,671,037.80		2,111,790.69	2,355,413.40
NASH:				
30.14 Miles	1,514,269.37	Less 50, 25 & 20%	554,852.04	770,168.58
Roadway Property	118,600.00	Less 50, 25 & 20%	80,013.00	80,013.00
Personal Property			567,974.44	567,974.44
Local Property	6,400.00		6,400.00	6,400.00
	1,639,269.37		1,209,239.48	1,424,556.02
NEW HANOVER:				
30.15 Miles	1,514,771.78	None	946,698.90	770,424.11
Roadway Property	559,000.00	None	559,000.00	559,000.00
Personal Property			568,162.88	568,162.88
Local Property	878,025.00		878,025.00	878,025.00
	2,951,796.78		2,951,796.78	2,775,611.99
NORTHAMPTON:				
8.88 Miles	$ 446,141.88	Less 33⅓%	$ 185,888.10	$ 226,910.75
Roadway Property				
Personal Property			167,339.73	167,339.73
Local Property				
	1.880,. 314484,4		353, 2948	07.83
ONSLOW:				
	1,824,357.45	Less 20%	912,009.82	927,630.90

NASH:				
20.14 Miles	1,514,269.37	Less 50, 25 & 20%	554,822.04	770,169.58
Roadway Property	118,600.00	Less 50, 25 & 20%	80,013.00	80,013.00
Personal Property			567,974.44	567,974.44
Local Property	6,400.00		6,400.00	6,400.00
	1,639,269.37		1,209,209.48	1,424,556.02
NEW HANOVER:				
20.15 Miles	1,514,771.78	None	946,606.90	770,424.11
Roadway Property	559,000.00	None	559,000.00	559,000.00
Personal Property			568,162.88	568,162.88
Local Property	878,025.00		878,025.00	878,025.00
	2,951,796.78		2,951,796.78	2,775,611.99
NORTHAMPTON:				
8.88 Miles	$ 468,141.88	Less 33⅓%	$ 185,866.10	$ 226,910.75
Roadway Property				
Personal Property			167,339.73	167,339.73
Local Property				
	1,000,. 314494,4		353, 2598	07.83
ONSLOW:				
36.31 Miles	1,684,257.45	Less 20%	912,009.82	927,630.90
Roadway Property	6,750.00	Less 20%	5,400.00	5,400.00
Personal Property			694,245.18	694,245.18
Local Property				
	1,691,007.45		1,601,655.00	1,617,476.088
PENDER:				
69.01 Miles	3,165,696.95	Less 25%	1,483,727.11	1,510,097.33
Roadway Property	10,500.00	Less 25%	7,875.00	7,875.00
Personal Property			1,187,294.14	1,187,294.14
Local Property	12,951.00		12,951.00	12,951.00
	3,189,147.95		2,691,947.25	2,618,317.47
PITT:				
56.04 Miles	2,815,515.98	Revaluation no reduction	1,759,469.17	1,431,992.58
Roadway Property	38,275.00		38,275.00	38,275.00
Personal Property			1,056,047.76	1,056,047.76
Local Property	180.00		180.00	180.00
	2,853,970.98		2,853,970.98	2,526,495.34
ROBESON:				
80.89 Miles	4,064,009.25	Revaluation no reduction	2,539,674.92	2,086,965.86
Roadway Property	53,215.00		53,215.00	53,215.00
Personal Property			1,524,334.33	1,524,334.33
Local Property	750.00		750.00	750.00
	4,117,974.25		4,117,974.25	3,665,265.19
SAMPSON:				
49.09 Miles	2,466,339.73	Less 25%	1,155,946.09	1,254,398.90
Roadway Property	16,975.00	Less 25%	12,731.00	12,731.00
Personal Property			925,078.28	925,078.28
Local Property	8,524.00		8,524.00	8,524.00
	2,491,838.73		2,102,279.37	2,200,732.18
SCOTLAND:				
10.05 Miles	504,924.06	Revaluation no reduction	315,536.28	256,607.60
Roadway Property	3,200.00		3,200.00	3,200.00
Personal Property			189,397.88	189,397.88
Local Property				
	508,124.06		508,124.06	449,205.63
WASHINGTON:				
3.78 Miles	199,911.86	Less 25%	89,009.42	96,590.18
Roadway Property	7,800.00	Less 25%	5,850.00	5,850.00
Personal Property			71,232.63	71,232.63
Local Property				
	197,711.86		166,092.05	173,672.81
WAYNE:				
39.28 Miles	1,973,473.75	Less 33⅓-16⅔%	966,636.99	1,003,723.58
Roadway Property	66,200.00	Less 33⅓-16⅔%	55,167.00	55,167.00
Personal Property			740,213.44	740,213.44
Local Property	5,553.00		5,553.00	5,553.00
	2,045,226.75		1,667,570.43	1,804,656.97
WILSON:				
31.44 Miles	1,579,562.90	Less 33⅓ & 10%	694,919.26	803,387.62
Roadway Property	94,690.00		74,098.00	74,098.00
Personal Property			592,472.32	592,472.32
Local Property	20,050.00		20,050.00	20,050.00
	$ 1,694,322.90		$ 1,371,539.58	$ 1,490,007.94

8-9-21 mt

PERCENTAGE OF REDUCTION AS MADE IN THE VARIOUS COUNTIES

Anson, 20% General, 10% for Towns of Morven, McFarlan and Wadesboro,
Beaufort, 25%,
Bertie, 25%,
Brunswick, None,
Columbus, None,
Cumberland, 10%,
Craven, Revaluation, None,
Duplin, Revaluation, None,
Edgecombe, 50% General, 20% Rocky Mount, 25% for Towns of Conetoe, Princeville, Tarboro and Whitakers,
Gates, 10%,
Halifax, 40%,
Harnett, None,
Hertford, 33⅓%,
Johnston, 33⅓%,
Jones, 30%,
Lee, 33⅓%,
Lenoir, 25%,
Martin, 33⅓%,
Nash, 50% General, 25% Rocky Mount, 20% for Towns of Battleboro, Nashville, Sharpsburg and Spring Hope,
New Hanover, None,
Northampton, 33⅓%,
Onslow, 20%,
Pender, 25%,
Pitt, Revaluation, None,
Robeson, Revaluation, None,
Sampson, 25%,
Scotland, Revaluation, None,
Washington, 25%,
Wayne, 33⅓% General, 16⅔% for Towns of Fremont, Goldsboro, Mt. Olive and Pikeville,
Wilson, 33⅓% General, 10% for Towns of Wilson and Elm City.

Office of Tax Agent,
Wilmington, N. C.,
August 9, 1921.

EXHIBIT 5

ATLANTIC COAST LINE RAILROAD COMPANY
TAXES—STATE OF NORTH CAROLINA—YEAR 1931

		Assessed 1931	Less Percentage Reduction on Real Estate	Decrease
Assessed Year 1930.		$50,867,800.00	$45,143,087.31	$5,724,712.69
Local Property		1,566,577.00	1,566,577.00	
Assessed Year 1931, less Local		49,269,223.00	43,544,510.31	5,724,712.69
Roadway Property.		1,550,550.00	1,368,375.00	172,175.00
Distribution Per Mile		47,718,673.00	42,166,135.31	5,552,537.69
Personal Property.			17,905,893.00	
			$24,260,242.31	
Value Per Mile		50,241.81	25,553.05	
Value Per Mile personal			18,844.53	
			44,397.58	
Intangible		11,346,870.00		
Rolling Stock		6,659,023.00		
Assessment	$ 50,867,800.00	17,905,893.00	$22,961,907.00	
Less % on Real Estate	45,143,087.00		37,237,194.00	
	5,724,713.00		5,724,713.00	
Per Cent Decrease.	11.25%		17.37%	

	Value	
Assessed	$ 50,867,800.00	
Less % on Real Estate	45,143,087.00	5,724,712.00
Annual Compensation	36,227,090.00	14,640,710.00
Capitalization of Earnings	41,730,199.00	9,127,601.00
Stocks and Bonds	41,150,361.00	9,717,439.00

The property of the Atlantic Coast Line Railroad in North Carolina is assessed as follows:

TANGIBLE PROPERTY:			
Real Assessed Local	$ 1,566,577.00		
Assessed Board	31,269,220.00		
Personal Rolling Stock	6,659,023.00	39,630,920.00	
Intangible Property		11,346,870.00	$50,867,800.00
Reduce the Real Property (exclusive of local Property which was reduced by the counties in which it is located), the same percentage of reduction in each county allowed by the State Board of Equalization in each county we would have	31,269,220.00 1,566,577.00		
Real Property assessed locally		$ 25,636,617.00	
Personal Property, (Rolling Stock.)		1,566,577.00	
Tangible Property		6,659,023.00	
Intangible Property		$33,896,217.00	
Under the Stock and Bond plan the value of tangible and intangible property,		11,346,870.00	$45,143,087.00
Tangible Property (less percentage of reduction)		33,896,217.00	
Intangible Property		7,254,144.00	41,150,361.00
Under the Capitalization of Net Earnings plan the value of the tangible and intangible property, Tangible Property (less percentage of reduction)		$33,896,217.00	
Intangible Property		7,833,982.00	$41,730,199.00
Under the Capital-			

147 *Affidavit of H. C. Prince.*

Filed Jan. 20, 1922.

Affidavit of H. C. Prince.

STATE OF NORTH CAROLINA,
City of Wilmington:

Personally appeared before me, a Notary Public in and for the State of North Carolina, City of Wilmington, H. C. Prince, a resident of the aforesaid State and City, who, upon being duly sworn, deposes and says that:

(1) He is Comptroller of the Atlantic Coast Line Railroad Company and has occupied that position since July 1, 1902, (except from July, 1918 to February 29, 1920), and as such Comptroller he prescribed the accounting methods of said railroad company and directed and supervised its accounts in accordance with such methods. From July, 1918 to February 29, 1920, he was Federal Auditor for the United States Railroad Administration and as such directed the accounting for the operations of the Atlantic Coast Line Railroad Company's properties, which during that period were operated by the United States Railroad Administration.

(2) Briefly stated, the methods prescribed by him for apportioning results of operations to individual states were as follows:

(*a*) Operating Revenues.

One hundred per cent of freight and passenger revenues accruing to traffic having both origin and destination within a state (known as intrastate traffic), and one hundred per cent of all miscellaneous revenues earned within a state, such as switching, demurrage, car service, storage and other similar items, are allocated to the state in which they are earned.

Revenues from freight and passenger traffic, having either origin or destination within one state (known as interstate traffic), and revenues from freight and passenger traffic which have origin or destination within one state, but which pass in whole or in part through such state, known as interstate traffic, are allocated
148 to the states within which such traffic moves on basis of miles travelled by such traffic in each state.

No deductions, adjustments or allowances are made in such allocations for assembling, handling, loading, unloading and other terminal costs incident to the handling of trans-state traffic.

(*b*) Operating Expenses.

Maintenance and transportation cost and other operating expenses are allocated to each state in such proportion of the total operating

expenses for the system as the gross earnings in that state bear to the gross earnings for the system. No additions to, or adjustments of such costs so allocated to an individual state are made to equalize or adjust the expenses of assembling, handling, loading, unloading and other terminal costs incurred in receiving and discharging interstate traffic.

(3) Deponent states that he realizes that the net revenues produced for the State of North Carolina under the accounting method for allocating operating expenses to states above described are not equitable; that revenues allocated to each state, as revenues are allocated by Atlantic Coast Line Railroad Company's system of accounting, should be charged with appropriate proportions of the cost of asesmbling, terminal and handling charges incurred without the state on interstate traffic moved within the state; but that in the absence of any uniform method of apportioning operating expenses among the states, that is to say, any method prescribed by the Interstate Commerce Commission, or any State Commission, he adopted that method as being the fairest for each state that he could arrive at.

(4) Deponent further states that the apportionment of Operating Expenses among the states is made in order to comply with the orders of the State Railroad Commissions of the several states through which we operate and to be used for comparative and statistical purposes. The figures representing said apportionment on the
149 basis heretofore outlined are to be considered as reflecting approximated operating results (not actual) in the several states through which we operate. These figures are not intended to be used in calculating the Operating Income of any state to be capitalized for the purpose of arriving at the value of the Atlantic Coast Line Railroad property in any state through which it operates.

(5) Deponent further states that it is not the practice of the Atlantic Coast Line Railroad Company to make inter-divisional charges for costs incurred by the individual operating division in transporting company material for other operating divisions; consequently there is no additional charges made to operating expenses assigned to the State of North Carolina for transporting coal consumed by Atlantic Coast Line Railroad in that state, although such coal is obtained from the Alabama, Tennessee and Virginia coal fields. The Atlantc Coast Line Railroad Company uses no fuel coal mined within the State of North Carolina.

Deponent further states that the data reported in Atlantic Coast Line Railroad Company's quarterly reports to the Railroad Commis-on of the State of North Carolina, designated as "Operating Expenses" for other and additional reasons do not truly or accurately reflect the operating costs chargeable to revenues allocated to said state, such other additional reasons being:

Approximately three-fourths of the total operating revenues allocated to the State of North Carolina are derived from interstate business; and that according to a test of four months business made

in November, 1921 it was developed that of all freight traffic handled in North Carolina 54% consisted of trans-state traffic, having neither origin or destination within said state. Said trans-state traffic consists largely of such high class revenue producing commodities as fruits, vegetables, strawberries and other perishable products, which are handled in special equipment such as refrigerator and
150 ventilated cars, which cars are moved in fast freight service. That the cost of handling said perishable traffic, considering initial and terminal service incident thereto, is largely in excess of the average cost of handling all business on the Atlantic Coast Line; that in crediting North Carolina the straight mileage prorate of the revenue on such traffic without any deduction for assembling, terminal or handling charges in connection therewith, and in charging to North Carolina only a ratio of operating expenses applicable to the business of the entire line, results in allocating to North Carolina a net revenue in excess of that which is actually earned within said state.

The operating results allocated to the State of North Carolina and reported by the Atlantic Coast Line Railroad Company to the North Carolina Corporation Commission do not include any amounts representing proportions creditable or chargeable to North Carolina for the following items of income:

Equipment Rents,
Joint Facility Rents,
Uncollectible Railway Revenue,
United States Government Taxes.

To the extent noted, said reports over-state or under-state the net operating income of the State of North Carolina. Railway Operating Income as defined by Congress in the Transportation Act, approved February 28, 1920, contemplates the inclusion of debits and credits arising from such sources.

(6) Deponent further states that based on his intimate knowledge of the operations of the Atlantic Coast Line Railroad Company as a whole and in the several states in which the company transports traffic, that its operations are so interwoven and so inter-dependent that it is not possible to actually segregate the net operating income applicable to each of the states, and in the absence of any authoritative classification or formula for such division the fairest allocation possible would, in his judgment, be to capitalize the net in-
151 come of the entire Atlantic Coast Line Railroad Company at the market rate of interest and to allocate to the several states that portion of the total capitalization as the mileage operated in said state bears to the total mileage of the entire line.

The deponent further states that the tons of freight handled and the revenue earned thereon in the State of North Carolina for the first ten months of the year 1921 compared with the first ten months of the year 1919 were as follows:

	1919.		1921.	
	Tons.	Revenue.	Tons.	Revenue.
January	564,394	$995,869.72	379,388	$826,588.65
February	587,362	752,502.28	413,152	915,814.91
March	663,439	1,019,017.87	534,252	1,157,630.17
April	700,628	1,133,755.25	579,703	1,258,140.69
May	587,165	990,541.83	421,329	945,437.36
June	538,504	957,269.79	434,681	920,540.97
July	588,032	923,375.14	391,177	820,309.60
August	417,791	714,256.94	374,139	775,409.69
September	532,336	905,892.44	371,224	777,318.48
October	617,672	1,078,518.74	473,114	959,162.69 (Est.)
Totals	5,797,323	$9,471,000.00	4,372,159	$9,356,353.21

The deponent further states that the figures shown below truly represent the tons of the commodities named handled by the Atlantic Coast Line during the first ten months of the year 1921 as compared with the first ten months of the year 1919:

	1919.	1921.
Cotton	279,290	162,057
Leaf Tobacco	153,326	109,918
Fertilizer	1,463,449	702,274
Lumber	2,326,680	1,692,887

The Deponent further states that the net operating income of the Atlantic Coast Line Railroad Company, as defined in the Transportation Act, 1920, for the first ten months of the year 1921 are as follows:

Railway Operating Revenues	$55,129,287
Railway Operating Expeness	49,031,583
152 Net Revenue from Railway Operations	$6,097,704
Railway Tax Accruals	2,675,000
Uncollectible Railway Revenues	18,201
Railway Operating Income	$3,404,503
Equipment Rents	398,269
Joint Facility Rent	42,286
Net Railway Operating Income	$2,963,948

The deponent further states, that the statement annexed hereto marked Exhibit "A" purporting to show Operating Revenues, Expenses, Taxes, Net Operating Income and other statistics, of the Atlantic Coast Line Railroad for the years ended June 30, 1915, 1916 and 1917, and for the year ended August 31, 1921, truly reflect the operating results for the period stated as shown by the books of the Atlantic Coast Line Railroad Company, and as reported by him to the Interstate Commerce Commission. Also that the statement an-

EXHIBIT "A"

ATLANTIC COAST LINE RAILROAD COMPANY.

Office of Comptroller.

Statement of Operating Revenues, Expenses, Taxes, Net Operating Income and other statistics for the years ended June 30, 1915, 1916, and 1917, average for three year period and for year ended August 31, 1921.

		1915	1916	1917	Average one Year	August 31st, 1921
1	Average Miles Operated	4,669.36	4,702.90	4,761.99	4,718.08	4,887.68
	OPERATING REVENUES:					
2	Freight Revenue	$21,064,187.99	$23,292,589.43	$27,069,720.63	$23,808,832.68	$46,457,452.04
3	Passenger Revenue	7,853,539.42	8,271,629.18	10,019,389.82	8,714,836.14	18,695,061.24
4	Mail Revenue	654,439.94	652,635.15	813,963.17	707,006.09	1,602,497.50
5	Express Revenue	1,085,748.51	1,266,392.42	1,456,125.83	1,269,422.25	1,771,235.95
6	All Other Trans. Revenue	374,270.09	393,858.40	357,762.38	375,295.29	712,331.25
7	Other Revenues	504,288.93	568,020.75	689,301.98	587,203.89	1,530,749.54
8	Railway Operating Revenues	$31,536,474.88	$34,445,110.53	$40,406,263.81	$35,462,596.34	$70,859,377.52
	OPERATING EXPENSES:					
9	Maint. of Way and Structures	$4,572,650.63	$4,811,802.14	$4,747,299.64	$4,543,917.47	$10,346,823.52
10	Maint. of Equipment	5,438,461.12	5,580,774.71	6,663,369.40	5,894,201.74	15,501,802.97
11	Traffic	661,513.69	708,179.17	745,670.75	703,454.54	1,155,226.40
12	Transportation	11,891,110.13	11,216,198.62	13,555,170.16	12,020,826.30	33,613,631.17
13	Miscellaneous Operations	110,546.52	125,146.95	158,132.65	131,275.37	414,316.94
14	General	880,377.15	884,196.36	951,980.42	905,517.98	1,747,810.77
15	Transportation for Investment—Cr.	*50,502.06*	*24,289.58*	*30,864.08*	*35,218.57*	*8,124.63*
16	Railway Operating Expenses	$22,904,157.18	$22,797,008.37	$26,790,758.94	$24,163,974.83	$62,771,496.99
17	Operating Ratio	76.63	66.18	66.30	68.14	88.59
18	Net Revenue from Railway Operations	$8,632,317.70	$11,648,101.96	$13,615,444.87	$11,298,621.51	$8,087,880.53
19	Railway Tax Accruals	1,569,156.80	1,798,880.70	1,982,579.89	1,783,855.63	3,175,000.00
20	Uncollectible Railway Revenue	14,046.74	15,426.24	11,382.93	13,631.97	83,640.16
21	Railway Operating Income	$7,029,114.16	$9,833,805.02	$11,620,482.55	$9,496,133.91	$4,829,240.37
22	Equipment Rents—Net	438,076.96	537,372.86	963,024.25	644,491.36	*171,506.22*
23	Joint Facility Rents—Net	125,478.35	129,879.37	130,708.11	128,688.61	*77,315.62*
24	Net Railway Operating Income	$7,567,669.49	$10,506,057.25	$12,714,214.91	$10,269,313.88	$4,580,418.53
25	Percent return on Investment	4.22	5.73	6.81	5.61	2.17
26	Revenue tons Carried	10,507,751	12,291,713	14,539,731	12,446,398	13,806,402
27	Revenue tons Carried One Mile	1,750,912,250	2,146,812,435	2,779,166,105	2,225,630,263	2,714,579,975
28	Revenue Passengers Carried	7,608,261	7,850,294	8,234,508	7,896,054	7,898,759
29	Revenue Passengers Carried One Mile	358,379,412	377,347,732	457,541,310	397,756,151	545,006,290

Wilmington, N. C., December 21st, 1921-s.

ITALICS SHOW DEFICIT

ATLANTIC COAST LINE RAILROAD COMPANY.

OPERATING REVENUES AND EXPENSES, TAXES, NET RAILWAY OPERATING INCOME AND OTHER STATISTICS BY MONTHS, FOR YEAR ENDED AUGUST 31st, 1921.

	September 1920	October 1920	November 1920	December 1920	January 1921	February 1921	March 1921	April 1921	May 1921	June 1921	July 1921	August 1921
Average Miles Operated	4,667.73	4,666.75	4,666.65	4,667.61	4,669.32	4,669.32	4,668.28	4,667.21	4,666.69	4,667.43	4,667.19	4,666.84
OPERATING REVENUES:												
Freight Revenue	$5,061,620.07	$4,445,777.75	$4,027,245.06	$3,000,698.11	$3,071,752.56	$3,894,305.61	$4,770,249.77	$4,464,972.12	$3,706,686.57	$3,405,950.67	$2,949,487.14	$2,662,456.64
Passenger Revenue	1,475,897.82	1,435,860.20	1,361,844.20	2,395,369.41	2,121,966.17	1,991,932.79	1,888,806.24	1,518,409.02	1,190,470.40	1,098,729.71	1,096,784.56	1,062,306.51
Mail Revenue	136,094.08	273,406.26	116,439.96	251,586.68	117,614.00	97,689.79	115,986.89	116,057.50	115,893.50	122,687.94	117,791.81	111,163.58
Express Revenue	114,508.97	143,138.52	161,622.42	137,159.05	125,174.36	56,031.29	201,229.19	155,136.42	194,568.63	184,591.61	115,149.98	122,323.56
All Other Transportation Revenue	49,661.22	68,007.92	68,080.22	209,205.23	40,758.75	42,747.35	49,254.21	47,009.47	36,016.16	34,279.36	30,675.11	30,496.15
Other Revenues	118,868.45	130,821.90	120,718.34	178,586.97	173,976.21	133,474.01	141,648.41	137,715.27	105,315.09	91,943.62	91,015.07	106,807.65
Total Railway Operating Revenues	$6,976,173.62	$6,496,994.75	$6,135,950.29	$6,087,585.05	$6,451,142.05	$6,321,950.63	$7,112,880.13	$6,439,299.80	$5,350,950.29	$4,938,182.91	$4,402,903.69	$4,175,444.11
OPERATING EXPENSES:												
Maintenance of Way & Structures	$ 962,989.06	$ 908,430.11	$1,149,989.83	$ 869,425.73	$ 913,258.91	$ 928,975.09	$ 963,586.96	$ 783,997.61	$ 803,077.28	$ 762,044.19	$ 732,874.79	$ 723,663.38
Maintenance of Equipment Expense	1,184,545.19	1,474,819.22	1,585,072.01	1,472,585.65	1,346,561.42	1,206,911.56	1,447,904.05	1,228,167.61	1,234,466.43	1,041,542.43	1,138,949.48	1,191,986.06
Traffic	83,864.80	97,696.32	109,362.96	109,311.00	114,006.96	107,237.28	92,528.37	96,804.72	96,404.63	82,699.25	93,198.41	84,065.83
Transportation	2,913,228.67	2,798,943.03	3,167,082.99	3,217,782.10	3,198,496.97	2,927,561.06	3,022,347.05	2,937,397.83	2,672,104.52	2,502,048.53	2,283,880.62	2,071,880.09
Miscellaneous Operations	29,009.05	31,294.52	27,575.22	44,190.10	47,519.90	47,083.26	54,803.62	35,294.56	23,967.21	20,896.99	22,310.26	18,841.94
General	144,618.75	141,944.63	160,618.33	153,186.20	147,489.17	139,948.13	154,782.26	152,972.50	149,222.63	140,527.73	138,294.01	134,361.44
Transportation for Investment—Cr.	*933.47*	*193.20*	*182.36*	*292.37*	*544.85*	*1,230.48*	*285.10*	*535.50*	*1,497.35*	*45.96*	*2,263.45*	*115.59*
Total Railway Operating Expenses	$5,318,622.59	$5,459,184.63	$6,156,460.48	$5,966,406.61	$5,765,908.51	$5,356,695.89	$5,735,566.62	$5,232,159.33	$4,977,835.45	$4,529,713.46	$4,397,252.12	$4,224,705.63
Operating Ratio Percent	106.84	98.85	100.37	72.72	89.39	82.68	79.23	81.25	93.03	91.72	99.87	101.2
Net Revenue from Railway Operations	*$ 340,454.64*	$1,047,760.12	*$ 22,500.19*	$2,201,186.64	$684,233.54	$1,095,254.94	$1,377,313.51	$1,207,140.47	$373,114.84	$408,469.43	$ 5,651.57	*$ 49,259.52*
Railway Tax Accruals	300,000.00	275,000.00	250,000.00	300,000.00	250,000.00	250,000.00	275,000.00	275,000.00	275,000.00	275,000.00	275,000.00	275,000.00
Uncollectible Railway Revenues	894.94	2,563.81	7,373.17	57,661.95	1,175.42	1,433.28	2,256.47	1,372.52	1,328.24	2,633.61	2,664.32	2,921.32
Railway Operating Income	*$ 640,719.52*	$770,206.31	*$ 279,872.36*	$1,943,524.69	*$433,058.12*	*$843,821.56*	$1,100,057.04	$930,767.95	$ 96,786.60	$130,835.82	*$ 272,012.75*	*$ 327,180.85*
Hire of Equipment—Net	114,189.52	127,232.03	111,484.47	52,061.06	*80,713.59*	*160,702.48*	*167,375.99*	*169,606.41*	*158,595.05*	*10,219.23*	39,347.65	121,691.80
Joint Facility Rents—Net	30,460.52	*13,191.02*	*15,736.21*	*26,391.53*	*11,554.12*	*10,250.44*	10,186.78	2,410.63	*5,982.19*	*44,810.47*	17,290.87	*9,648.34*
Net Railway Operating Income	*$ 496,070.54*	$894,947.32	*$184,124.10*	$1,969,184.22	$340,790.41	$672,868.64	$1,042,817.63	$763,572.17	*$ 68,090.64*	$75,806.14	*$ 215,425.53*	*$215,137.19*
Percent return on Investment	Loss	5.23	Loss	11.44	1.92	3.79	5.86	4.29	Loss	0.43	Loss	Loss
Revenue Tons Carried	1,150,327	1,489,779	1,226,024	1,961,488	1,006,713	1,085,784	1,319,864	1,170,931	1,009,059	1,011,726	943,985	940,992
Revenue Tons Carried One Mile	208,704,179	239,694,180	243,294,950	304,185,130	214,253,645	219,035,225	258,172,280	237,521,930	208,127,755	196,198,445	186,930,770	180,471,395
Revenue Passengers Carried	849,674	824,913	775,690	884,829	742,184	639,384	680,521	524,370	517,794	467,350	580,219	582,721
Revenue Passengers Carried One Mile	47,259,696	43,870,044	45,299,251	66,541,769	62,363,718	58,812,801	58,436,209	40,450,365	32,726,464	31,733,320	32,214,555	31,726,118

Wilmington, N. C., December 22nd, 1921-s.

ITALICS SHOW DEFICIT

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nexed hereto marked Exhibit "B" purporting to show Operating Revenues, Expenses, Taxes, Net Operating Income, and other statistics by months for the year ended August 31, 1921, truly reflect the operating results for the months named as shown by the books of the Atlantic Coast Line Railroad Company, and as reported by him to the Interstate Commerce Commission.

H. C. PRINCE.

Subscribed and sworn to before me,
This 22nd, day of December, 1921.
[SEAL.]

BERTRAM QUELCH,
Notary Public.

My commission expires May 31, 1922.

(Here follow tables marked pages 153 and 154.)

155 *Affidavit of P. R. Albright.*

Filed Jan. 20, 1922.

Affidavit of P. R. Albright.

STATE OF NORTH CAROLINA,
County of New Hanover:

P. R. Albright, being duly sworn, deposes and says:

That he is General Manager of Atlantic Coast Line Railroad Company, complainant in the above entitled action, and has been General Manager of that railroad since November 16, 1915, with the exception of the time during which the roads were under Government control, and he was then General Manager of the said railroad for the Director General of Railroads of the United States Railroad Administration; that prior to said November 16, 1915, he was Assistant General Manager and Assistant to the General Manager for many years.

During the period of Federal control, by reason of the inability of the railroads to secure either a full quota of men or necessary amount of materials, as well as by reason of the fact that a tremendous volume of business was handled incident to the conduct of the *the* War, the equipment, both locomotives and cars, deteriorated to a greater extent than would normally have been the case, and greater usage of roadbed and structures likewise caused an abnormal deterioration in the maintenance of way and structures, which deterioration was further brought about by inability to secure men and materials to make repairs, even when funds were available.

Subsequent to the period of Federal control, an effort was made to overcome the deferred maintena-ce of roadway, structures, and equipment, but for many months there was continued shortage of men and materials. Likewise, there was a very heavy increase in the accumulation of freight cars, requiring maintenance, which were returned to this Company from all sections of the United States where they had been scattered during Federal control, and
156 were in a most dilapidated condition upon reaching the rails of the home company. The extent of repairs to nearly all such cars was so great in many instances that it practically amounted to rebuilding them.

This affiant further says that after the return of the railroad by the United States Government to this Company it had not sufficient funds and did not earn sufficient funds to make the necessary repairs to its locomotives and cars, and to its ways and structures, so that as of October 31, 1921, there were then remaining on hand locomotives, passenger and freight cars, to repair which would cost $2,461,786. In addition to this amount and for the same causes, there now remains the sum of $3,290,000, which it will be necessary to expend in maintenance of way and structures in order to bring the said property back to its normal condition, making a total of $5,-

751,786, all of which amount must, necessarily, have to be made up out of earnings, and all of this maintenance has been deferred on account of lack of earnings and cannot be done until the earnings are sufficiently great to provide the funds therefor.

Affiant further says that the cost of building and maintaining the line of railroad of this Company in the states of Virginia and Alabama is much greater than the cost of its lines in North Carolina.

P. R. ALBRIGHT.

Sworn and subscribed to before me,
This 23rd day of December, 1921.
[SEAL.]

P. L. EASTERLING,
Notary Public.

My commission expires January 11, 1923.

157 *Affidavit of H. L. Borden.*

Filed Jan. 20, 1922.

Affidavit of H. L. Borden.

STATE OF NEW YORK,
City of New York:

H. L. Borden, being duly sworn, deposes and says that he is Vice-President and Secretary of the Atlantic Coast Line Railroad Company, a corporation of the State of Virginia, and has been such Vice-President since November 20, 1917, and has been such Secretary since November 17, 1902; that he is familiar with, and has kept familiar with the securities of the Atlantic Coast Line Railroad Company, generally, for twenty years or more; that he has read the words and figures on pages forty-seven, forty-eight and forty-nine of the Bill of Complaint of the Atlantic Coast Line Railroad Company filed in this cause; that the tables shown on said pages, showing the market prices of the stocks and bonds of the Atlantic Coast Line Railroad Company were compiled under his direction; that said figures on page forty-seven were, to the best of his knowledge and belief, taken from the "Commercial and Financial Chronicle," a financial paper published in the City of New York, which does now and has for many years made a business of compiling and publishing the quotations of stocks and bonds on the New York Stock Exchange and other markets, and from other financial sources; that the said "Commercial and Financial Chronicle" is a publication circulating throughout the financial districts of the United States, covering financial reports and reports of the market conditions of stocks and bonds, and its quotations are accepted throughout the financial markets and districts as being correct and accurate reports of market values, and that the statements on page forty-seven so compiled under the direction of this affiant are true and correct statements as taken from the said "Commercial and Financial Chronicle" and the figures referred to as "average prices" on pages forty-eight and forty-nine are based on such reported market values.

H. L. BORDEN.

Sworn and subscribed to before me,
This 21st day of December, 1921.
[SEAL.]

ELLA COLEMAN,
Notary Public, No. 126, N. Y. Co.

My commission expires March 30, 1922.

158 *Affidavit of S. R. Morton.*

Filed Jan. 20th, 1922.

Affidavit of S. R. Morton.

STATE OF NEW YORK,
City of New York:

S. R. Morton, being duly sworn, deposes and says that he is employed as a clerk in the office of H. L. Borden, Vice-President and Secretary of the Atlantic Coast Line Railroad Company, a corporation of the State of Virginia, and has been so employed since September 4, 1906; that he has read the words and figures on pages forty-seven, forty-eight and forty-nine of the Bill of Complaint of the Atlantic Coast Line Railroad Company filed in this cause; that he compiled the tables shown on said page forty-seven showing the market prices of the stocks and bonds of the Atlantic Coast Line Railroad Company and that said figures were by him taken from the "Commercial and Financial Chronicle," a financial paper published in the City of New York, and that the statements are true and correct as taken from the said "Commercial and Financial Chronicle."

S. R. MORTON.

Sworn and subscribed to before me,
This 21st day of December, 1921.
[SEAL.]

ELLA COLEMAN,
Notary Public, No. 126, N. Y. Co.

My commission expires March 30, 1922.

159 *Affidavit of R. E. Johnson.*

Filed Jan. 20, 1922.

STATE OF NORTH CAROLINA,
County of Gaston:

R. E. Johnson, being duly sworn, says:
That he is a citizen of Gaston County, North Carolina, and has been such for a number of years; that he is engaged in the business of selling agent and merchandise distributor and is acquainted with the current rate of interest prevailing in his section of the State of North Carolina during the year 1920 and the spring and summer of 1921 and at this time.

Affiant further says that he is informed and believes, throughout the State of North Carolina, the current rate of interest generally prevailing and which was customarily sought and obtained upon capital invested in banking, merchandising and other business was in 1920 and in 1921 not less than eight per cent (8%) per annum.

Affiant further says that this oath is based upon knowledge of actual loans and upon a general knowledge of the rate of interest paid for money and which invested capital yielded.

(Signed) R. E. JOHNSON.

Subscribed and sworn to before me, this the 5th day of October, 1921.

(Signed) EDNA J. AHMAND,
Notary Public, Gaston County, North Carolina.

My Commission expires September 3, 1922.

Like affidavits as to the same rate of interest were made by the following:

W. C. Idol, Cashier, Wachovia Bank & Trust Company, High Point, N. C.,

V. A. J. Idol, Cashier, Commercial National Bank, High Point, N. C.,

Frank Wineskie, Manufacturer, High Point, N. C.,

Guy E. Wells, Automobile Dealer, High Point, N. C.,

J. E. Kirkman, Furniture Manufacturer, High Point, N. C.,

Harry Raymond, Manufacturer of Veneers, High Point, N. C.,

W. H. Slave, Hosiery Manufacturer, High Point, N. C.,

R. T. Amos, Hosiery Manufacturer, High Point, N. C.,

Wallace B. Davis, President, Central Bank & Trust Company, Asheville, N. C.,

S. M. Hanes, Secretary, Bankers Trust and Title Insurance Company, Asheville, N. C.,

R. H. Edwards, President, Farmers Loan & Trust Company, Goldsboro, N. C.,

Geo. D. Bizzell, Chairman, County Board of Commissioners of Wayo County,

Fred R. Mintz, co-partner of Williamson Real Estate Company, Mount Olive, N. C., and Representative in the General Assembly of North Carolina from Wayne County.

160

Affidavit of Raymond C. Parker.

Filed Jan. 20, 1922.

STATE OF NORTH CAROLINA,
County of Forsyth:

Affiant, Raymond C. Parker, says that he is a practicing attorney at law, and has been a resident of Forsyth County for 6 years; that he has made an examination of all deeds recorded in Forsyth County as appears in schedule hereto attached from January 1, 1921, to

June 30, 1921, inclusive, in which the consideration appears to be more than One Thousand Dollars ($1,000), and also of the assessed value of the real estate embraced in said deeds for the year 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration of the conveyance and the assessed value of the said property for the year 1921; that when the considerations shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows: From the amount of Federal Tax imposed and entered on the record, viz.: when the consideration or value of the interest in the property conveyed, exclusive of the value of any lien or encumbrance thereon exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or factional part thereof in excess of $500, 50 cents, and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $1,024,446.57, and that the total assessed values for taxation for the year 1921 of the properties embraced in said deeds contained in said statement amount to $660,229.00. The statement is attached hereto, initialed and numbered — to —.

RAYMOND C. PARKER,
Affiant.

Subscribed and sworn to before me this 14th day of January, 1922.

My commission expires Oct. 5, 1922.

[SEAL.] FRANCES ADAIR JONES,
Notary Public.

(Here follows table marked pages 161-166, inc.)

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Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Jan.	3	N.S.Myers	D.Coy Joyce	1,500.00	600.00
Jan.	3	Emma Tesh	E.O.Hunter	1,550.00	800.00
Jan.	1	Bowman Gray	David White	72,500.00	54000.00
Jan.	4	A.G.Logan	J.S.Loyd	5,000.00	3500.00
Jan.	5	G.W.Flynt,Sheriff	Walter Thompson et al	1,300.00	Church
Jan.	4	H.B.Stimson	Lillie B. Vestal	3,000.00	2400.00
Jan.	7	Jack Whitlock	R.W.Craft	1,000.00	850.00
Jan.	5	J.A.Stith & Wife	J.S.Mock	3,500.00	4500.00
Jan.	14	Clarance A.Warner	Bertha L.Fulton	1,500.00	1250.00
Jan.	19	J.N.Davis et als	W.C.Crews	6,000.00	1466.00
Jan.	1	A.E.Holton	E.L.James	5,821.20	2874.00
Jan.	19	W.G.Jerome	W.Ray Johnson	4,000.00	600.00
Jan.	19	W.R.Lauten	R.S.Wear	5,000.00	3300.00
Jan.	1	R.K. Mendenhall	H.J.Tucker	2,000.00	3500.00
Jan.	24	F.O.Jones	Grover McGee	5,500.00	720.00
Jan.	24	T.J.Gourly	F.O.Jones	1,500.00	700.00
Jan.	24	Fred Smith	Martha Conrad	1,000.00	300.00
Jan.	18	E.C.Ward	W.R.Ward	3,000.00	2100.00
Jan.	12	A.C.Dillon et als	T.S.Wood	2,400..00	2480.00
Jan.	20	Sarah F.Smith et al	Lizzie Crews	1,440.00	615.00
Jan.	24	Jas.A.Gray et als	C.G.Hill et als	2,000.00	1400.00
Jan.	18	G.C.Jackson & Wife	Mrs.Lollie C.Flake	2,000.00	750.00
Jan.	26	R.R.Jones & Wife	Milton Cash	19,000.00	10000.00
Jan.	25	Hugh C.Pollard	John L. Wimbish	30,000.00	25600.00
Jan.	28	B.D.Smith	City of Winston-Salem	3,000.00	City
Jan.	20	Luther H. Smith et als	City of Winston-Salem	5,970.00	City
Jan.	26	George Lee Cass	Martha G. Carter	3,000.00	1500.00
Jan.	26	Jas.G.Hanes	Annie M.Butler	1,600.00	1000.00
Jan.	14	T.W.Griffith	W.N.Reynolds	25,500.00	13265.00
Jan.	25	W.P.Hill,Jr.	F.B.Crowther	1.650.00	1500.00
Jan.	28	I.C.Sprinkle	W.T.Brown	2,450.00	1200.00
Jan.	31	Merchants B.&Tr.Co.	Ira Rhoads	3,700.00	2500.00
Jan.	1	E.S.Porter & Wife	W.M.Himmer	2,500.00	1700.00
Feb.	1	E.B.Shouse & Wife	Nellie H. Craver	3,000.00	2500.00
Jan.	31	R.L.Davis et al	C.D.Montgomery	1,500.00	700.00
Jan.	31	D.S.Reid	W.J.Pinkston	7,500.00	3600.00
Feb.	2	C.H.Smith et al	J.F.Myers	2,000.00	1000.00
Feb.	1	Minnie E. Fitzgerald	E.R.Linville	1,000.00	750.00
Jan.	29	John Scheidt et al	J.T.Boyer	4,500.00	2500.00
Jan.	15	Lewis E.Spaugh et al	Henry A. Fishell	8,000.00	5485.00
Feb.	5	William R. Robins et al	Frank A. Woodley	5,000.00	4000.00
Feb.	5	Annie B. Gleen et al	W.L.Mooney	8,000.00	4000.00
Feb.	2	W.O.Crotts & Ella	W.B.Seagraves	2,000.00	850.00
Feb.	1	C.F.Henderson et al	J.Allen Marshall	2,000.00	1225.00
Jan.	8	W.E.Nissen et al	J.A.Evans	12,500.00	1800.00
Feb.	3	A.B.Somerville et al	F.J.Thomas	3,000.00	2500.00
Feb.	1	W.H.Speas et al	William Thomas Boger	2,000.00	1540.00
Feb.	4	W.H.Speas	Cora L. Speas	1,000.00	1505.00
Jan.	21	Dorcas A.Lott et al	H.Stokes Lott,Jr.	5,000.00	6075.00
Feb.	1	B.F.Briggs & Mary	H.A.Cunningham	2,300.00	2000.00
Jan.	22	Miriam Crossett	Hattie D.Futrell	3,400.00	800.00
Feb.	7	Geo.D.Hodgin	Russell G.Holder	1,000.00	300.00
Jan.	28	J.C.Kruger	Myrtle Freeland	6,000.00	3200.00
Jan.	31	R.F.Tilley & Lula	Pilot Real Estate Co.	3,500.00	300.00

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Feb.	9	C.E.Ebert et al	W.R.Lauten	2,150.00	3200.00
Feb.	8	R.Thurmond Chatham etal	Laura R.Medearis	2,500.00	1250.00
Feb.	5	W.W.Foy & Bessie L.	Matilda Smith	1,000.00	1000.00
Feb.	7	Cora Daye & Chas	U.A.Bost	2,500.00	1500.00
Jan.	26	M.C.Venable et al	R.C.Perry	1,500.00	600.00
Jan.	14	H.A.Pfohl et al	G.M.Bryan	3,000.00	2600.00
Feb.	8	M.G.Tucker et al	R.W.Ebert	4,000.00	2800.00
Feb.	6	J.W.Richardson et al	C.S.Richardson	3,000.00	2250.00
Feb.	15	J.A.Templeton et al	Wesley M.McCann	2,000.00	2000.00
Jan.	29	C.W.Jones et al	C.M.Phelps	3,300.00	2000.00
Feb.	14	B.F.Foy & Belle	Henry V. Brown	1,200.00	765.00
Feb.	14	E.Fuller Conrad	E.J.Carson	3,250.00	2500.00
Feb.	14	Dr. E.L.Cox	W.R.Thomas	3,000.00	1800.00
Feb.	4	John W.Miller	Wesley Hege	2,331.70	1500.00
Feb.	2	Katherine D.Roddey etal	Bob Kiriakides	3,500.00	2000.00
Feb.	15	Jim Gill & Bessie	Smithdeal Realty Co.	1,000.00	1000.00
Jan.	27	J.C.Graham Jr. et al	B.M.Cahill,Jr.	1,000.00	550.00
Jan.	22	A.C.Cranfill et al	H.T.Clayton	2,250.00	1850.00
Feb.	15	Hugh M.Hinshaw	Guy F.Hinshaw	1,000.00	750.00
Feb.	11	J.M.Hodges	Nance Leonard	1,200.00	1000.00
June	10	The E.Winston Dev.Co.	E.C.Lowder	1,000.00	400.00
June	6	Realty Exchange	City of Winston-Salem	3,750.00	City
Mar.	31	Pilot Real Estate Co.	C.S.Roddick	2,500.00	1450.00
June	3	Poindexter,M.W. Co.	Ralph Long et al	86,000.00	20200.00
June	16	Fairview Supply Co.	G.W.Dailey	1,000.00	700.00
June	29	Central Terrace Co.	Geo.W.Brady	1,200.00	200.00
June	7	Poindexter M.W.Co.	Paul O. Pegram	5,000.00	3750.00
June	21	Standard Improv. Co.	Henry L.Islar	5,500.00	933.00
Mar.	9	Central Terrace Co.	Mary Miller	1,000.00	250.00
Feb.	22	Cobb Noble Co.	E.F.LaGrande	3,500.00	2600.00
June	7	Poindexter M.W. Co.	J.H.Bowman	3,000.00	4450.00
Mar.	5	Winston Realty Co.	Daisy E.Grubbs	1,500.00	600.00
June	7	Highland Dev. Co.	T.B. Vick	1,000.00	400.00
Feb.	1	Standard Improv. Co.	J.F.Smithdeal	3,250.00	2250.00
Apr.	6	W.J.Dillon & Mattie	Southside Realty Co.	1,350.00	1000.00
May	25	C.H.Brown et al	W.T.Brown	3,200.00	1200.00
June	1	G.W.Linville et al	C.C.Musten	3,800.00	3460.00
May	27	S.Carter Williams etal	Southern Loan & D.Co.	1,500.00	1400.00
May	26	C.H.Jones	J.C.Stewart, Agt.	1,000.00	700.00
May	24	James Gill & Bessie	A.Shevick	1,500.00	1000.00
June	2	D.S.Reid	Allie Gooch Reid	5,000.00	14000.00
June	3	John F.Reynolds et al	J.M.Brown	5,000.00	8000.00
June.	2	John Grace & Gladys	Southern Loan & D. Co.	3,500.00	3250.00
May	13	S.C.Williams Trustee	Dixie Bond & Mortg Co.	1,300.00	1300.00
Mar.	5	Nancy Maynard et al	S.M.Arnold	1,000.00	1800.00
May	17	J.B.Ashby & Wife	R.D.Austin	1,000.00	600.00
May	23	M.D.Stockton et al	J.W.Ingle	8,500.00	4000.00
Apr.	8	W.F.Gordon & Fannie	T.J.Huffman	2,000.00	1780.00
June	4	G.F.Jenkins et al	Sarah L.Kallam	1,000.00	1800.00
June	4	West End Devel. Co.	J.J.Currin & Wife	3,000.50	1980.00
May	31	J.R.Clayton et al	N.O.Covington	2,500.00	650.00
June	2	Chas. W. Phelps et al	N.M.Linville et als	2,000.00	2000.00
June	4	Mary Sue Etheridge	W.F.Roesel	3,000.00	2500.00
May	27	J.M.King et al	R.M.Ray	9,000.00	2600.00
May	27	R.M.Ray	Lina B. Poe	1,000.00	2600.00

AC2

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
June	3	J.A.McDowell	Carey P.Thornbro	1,000.00	900.00
May	7	T.G.Neely & Mamie	City of Winston-Salem	1,500.00	950.00
June	7	E.C.Willey et al	Nancy Bowers	1,000.00	700.00
June	6	T.F.Carter	Eliza Humphries	2,250.00	1750.00
May	25	B.C.Tavis et al	T.G.Neely	2,000.00	1150.00
May	20	Wb. & T.Co.Ex.	John C.Joyce	4,725.00	1900.00
June	1	T.D.Newton et al	Jonas B.Bailey	1,000.00	750.00
June	6	Frances P.Johnson etals	S.F.Penry	1,000.00	750.00
June	2	W. F. Miller	R. J. Parrish	1,800.00	800.00
Feb.	28	J. L. Wimbish	Mackie	4,000100	3250.00
March	15	Robert C. Spaugh	Lawrence D. Long	1,000.00	400.00
June	6	J. H. Whicker	R. K. Scharborough	1,600.00	1000.00
May	7	Chas. Walser	City of Winston-Salem	6,000.00	2750.00
June	11	I. L. Sisk	H. A. Beckerdite	2,000.00	1500.00
June	7	George Crews	City of Winston-Salem	6,000.00	4000.00
May	7	E. W. Smith	City of Winston-Salem	6,000.00	1800.00
May	7	William Donell	City of Winston-Salem	3800.00	1500.00
March	19	J. C. Graham, Jr.	Chas. W. Grishaw	1,000.00	450.00
June	10	Chas. W. Grishaw	Katie L. Cahill	1,025.00	450.00
June	8	John H. Dyer & Bertha	Lewella M. Shore	4,000.00	3250.00
Apr.	1	Fannie T. Dycus	T. W. Beaman	3,000.00	2700.00
Apr.	9	W. H. Clinard	Joe H. Russell	1,500.00	1300.00
Apr.	9	W. H. Clinard	Oscar I. Smith	3,500.00	1350.00
Apr.	9	P. C. Clinard	M. P. Knouse	1,500.00	1300.00
Apr.	9	P. C. Clinard	J. C. Faw	1,500.00	1300.00
June	14	K. E. Shore	M. A. Haney	1,000.00	600.00
June	13	G. L. Johnson	G. H. Little	1,000.00	800.00
June	13	A. B. Elam	W. H. Lewis	2,500.00	1000.00
May	28	M. A. Walker	Mary Orr Wright	8,000.00	5500.00
Mch.	31	C. S. Roddick	Pilot Real Estate Co.	1,000.00	1200.00
June	11	J. P. Jarrett	Carifolos G. Morris	3,000.00	2500.00
June	18	L. F. Owen	Gill Hill	3,598.10	2455.00
June	18	C. M. Thomas	W. H. McMahan	3,000.00	1500.00
June	18	E. L. Kiser	J. W. Styers	3,500.00	1000.00
June	21	Wachovia Bank & TrustCo.	Liberty Baking Corp.	4,500.00	2143.00
June	3	C. J. Helsabeck	D. M. Wright	1,800.00	1000.00
June	18	P. A. Fountaine	Joe Tilley	3,240.00	3000.00
June	17	H. L. Walser	Poindexter Montague Gh.	2,000.00	1600.00
June	20	Ovid Jones	Luther S. David	3,950.00	2200.00
June	21-	J. A. Tise	Ben V. Matthews	1,800.00	1200.00
June	17	Wachovia B. & Trust Co.	H. L. Walser	2,000.00	300.00
June	15	J. H. Burns	J. S. Lloyd	1,500.00	1000.00
June	3	A. Shevick	Annie Shevick	1,000.00	1000.00
June	21	F. H. Rawls	J. C. Graham, Jr.	1,500.00	500.00
June	22	H. D. Shutt	Bill Paulos	3,500.00	1500.00
May	31	J. F. Self	J. Neal Davis	4,300.00	3180.00
June	22	Amanda C. Brewer	Mrs. Etta R. Snyder	3,500.00	3000.00
June	25	J. C. White	J. A. McDowell	1,000.00	700.00
June	11	Farmers B. & Trust Co.	Rosa H. Kapp	1,170.00	1150.00

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Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
June	22	A. L. Green	Ford	1,200.00	900.00
June	24	J. B. McCreary	W. G. Cranford	1,500.00	120.00
June	10	Virginia Wright	H. F. Hedrick	2,500.00	3100.00
Feb.	8	L. M. Porter	Jeter Duckworth	3,000.00	1400.00
June	23	H. F. Hedrick	J. A. McDowell	1,500.00	400.00
Apr.	21	J. P. Lacy-	W. H. C. Franks	1,760.00	1300.00
June	16	Fred Sheetz	W. B. Carlton	1,500.00	750.00
June	24	W. T. Hill	Dr. A. H. Ray	1,400.00	1925.00
June	25	T. B. Transou, Littie	J. H. Newberry	2,500.00	1425.00
June	27	J. H. Newberry	T. B. Transou	7,500.00	1500.00
June	28	W. H. C. Franks	G. B. Craft	1,000.00	600.00
June	28	M. A. Haney	W. B. & Trust Co.	3,800.00	2000.00
June	27	P. S. Carter	The Autoserve Co.	1,500.00	1250.00
June	29	Marlie Gant	W. H. Mock	1,500.00	600.00
Feb.	24	Jennette Lambeth	May J. Jones	2,000.00	1100.00
June	29	H. M. Brown	Arthur Clodfelter	1,638.00	605.00
June	10	S. C. Ripple	Home Builders Co.	1,000.00	1200.00
June	30	Frank W. Hanes	John H. Folger	26,000.00	24796.00
June	16	A. A. Slawter	S. W. Garner	1,000.00	60.00
March	31	Rosa Carmichael Jones	Mrs. E. M. Leight	1500.00	1500.00
May	6	C. L. Bagby	D. G. Kelley	3,000.00	2200.00
June	25	Carrie B. Crooh	J. Robah Thomas	1,500.00	700.00
May	21	J. M. Tyson	R. M. Hanes	1,000.00	3200.00
Apr.	28	Dempsey Smith	Bertha Stuart	2,000.00	3000.00
June	18	J. N. Davis	Dora Orleans	1,000.00	2750.00
June	17	Dora Orleans	Home Builders Co.	1,000.00	2900.00
June	24	S. C. Riffle	Fred J. Andrews	1,000.00	1200.00
June	17	H. R. Jordan	J. N. Davis, et al.	1,500.00	1000.00
June	2	C. M. Thomas	John F. Bidden	1,900.00	500.00
June	28	C. M. Thomas	J. R. Thomas	4,000.00	1500.00
Apr.	28	W. B. & Trust Co.	Nathan Berlin	2,000.00	1000.00
May	23	J. O. White	Sadie E. Fisher	1,500.00	500.00
June	30	Agnes R. Jones	T. M. Lathan	3,500.00	1425.00
June	2	E. T. Pinkston	Frank B. Cash	1,500.00	1500.00
June	27	J. G. Jones	L. W. Edwards	2,300.00	2000.00
Apr.	8	J. A. Gordy	Amanda J. Doub	2,200.00	800.00
June	6	D. L. Donnell	H. J. Flynt	2,510.00	400.00
Apr.	23	J. L. Swaim	Walter Nifong	2,500.00	1700.00
Feb.	15	Jeter Duckworth	L. M. Porter	8,000.00	3000.00
May		Ida F. Thompson	R. P. Penry	2,900.00	2600.00
Jan.	5	L. R. Malone	H. M. Reid	2,500.00	1850.00
Apr.	19	J. C. Williamson	John Pitts	2,500.00	650.00
Feb.	8	S. C. Riffle	Julia C. Knox	1,000.00	600.00
June	13	H. Jacobson	M. Hersh	1,500.00	2187.00
June	1	Chas. L. Barclay	Gus. N. Polites	4,710.00	2800.00
Apr.	6	R. J. Bowen, et al.	L. C. Oakley	1,000.00	400.00
Jan.	1	Jas. A. Hutchins	Nell W. Porter	2,000.00	900.00
Apr.	1	J. P. Ashby	J. R. Irby	1,000.00	600.00
Jan		P. H. Hanes, Jr.	L. C. Oakley	2,500.00	2000.00

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Jan.	13	Smithdeal Realty Ins.Co.	Ray M. Tesh	4,800.00	2500.00
Jan.	1	Southern DevelopmentCo	Mrs. Minda D. Hankins	1,250.00	1000.00
Jan.	24	Pilot Real Estate Co.	J. W. LaLonde	4,750.00	4000.00
Jan.	21	Poindexter Montague Co	H. F. Hoote, Jr	5,000.00	4000.00
Feb.	7	Highland Dev. Co.	Jannie Mundy	1,500.00	800.00
Feb.	3	Highland Dev. Co.	Phebe T. Johnson	1,000.00	400.00
Feb.	7	Southern Realty Co.	Lillian D. Bulla	1,500.00	1000.00
Feb.	22	The Banner Inv. Co.	J. B. Courtney	2,500.00	1500.00
Feb.	5	The Ardmore Co.	C. C. Ausband	1,500.00	900.00
Feb.	26	County Board of Educat	Sarah E. Lindsay	1,330.00	1400.00
March	7	Smithdeal Realty Ins.Co.	Journal Publishing Co.	1,000.00	600.00
March	7	S. J. Bennett, et al	Dr. C. W. Mimms	1,250.00	1300.00
March	2	The Motor Co.	A. B. Elam	1,000.00	400.00
March	16	Highland Dev. Co.	Annie Lula Dobson	2,000.00	600.00
March	16	Fred H. Foote	Minnie Strange	2,800.00	4000.00
March	21	Central Terrace Co.	H. F. Anderson	1,000.00	450.00
March	22	Cobb Glass Co.	J. H. Clinard	2,000.00	1700.00
March	18	Pilot Real Estate Co.	Nell W. Porter	2,500.00	1250.00
March	31	Standard Improvement Co	William Breach	1,500.00	1100.00
Feb.	4	Smithdeal R. & Ins. Co.	Sentinel Pub. Co.	1600.00	1600.00
Apr.	4	The Motor Co.	S. A. Fields	1,500.00	900.00
Apr.	12	Forsyth Roller Mills	A. L. Butner	2,200.00	7325.00
Apr.	8	The Banner Inv. Co.	W. P. Hill	2,000.00	2350.00
Apr.	5	Virginia Carolina LandCo	C. T. Hauser	7,500.00	5000.00
Feb.	1	Poindexter-Montague Co.	W. M. Stamper	6,000.00	5700.00
Apr.	5	Poindexter-Montague Co.	T. M. Hamby	5,000.00	3500.00
March	17	Smithdeal Realty Ins.Co	Orinoca Supply Co.	2,000.00	1185.00
Apr.	26	Ogburn Realty Co.	H. G. Smith	6,000.00	5000.00
Apr.	28	Highland Dev. Co.	D. H. Blair	1,500.00	800.00
Apr.	14	Ham Estate, Inc.	John B. McRay	22,500.00	10600.00
Apr.	14	Ham Est., Inc.	Rominger Furniture Co.	21,500.00	12500.00
May	5	W. W. Walsh & Co.	Luther Kellurn	1,639.00	900.00
May	7	Home Real Estate Co.	D. L. Donnell	2,855.00	1985.00
May	25	Smithdeal R. & Ins. Co	D. S. Tucker	3,100.00	1800.00
May	31	Fred Hutchins	T. E. Frye	2,500.00	2000.00
June	2	Cobb Noble Co.	C. H. Wells	1,000.00	3640.00
May	31	Wachovia B. & Trust Co.	Rabbi K. Smulin	3,500.00	1743.00
Feb.	2	L. C. McKaughn	C. H. Smith	1,900.00	2000.00
Jan.	25	E. P. Yates	A. F. Moses	1,000.00	1000.00
Feb.	18	W. T. Wilson	Merchants B. & TrustCo	2,982.50	3250.00
Jan.	13	J. H. Whicker	F. L. Pool	7,903.00	6250.00
Mch.	16	J. D. Waggoner	H. F. Samuel	1,600.00	610.00
Mch		W. C. Sale	S. P. Sale	1,100.00	800.00
Mch.	25	Jno. C. Wallace	B. C. Tavis	1,175.00	700.00
Mch.	26	D. H. Blair	J. A. Tise	5,550.00	4340.00
Mch.	29	Merchants B. & TrustCo.	L. C. Oakley	5,075.00	5000.00
Apr.	4	W. A. Lumly	Dr. William H.Bruce	1, 643.27	1800.00
Mch.	21	D. H. Blair	A. B. Elam	1,575.00	1400.00
June	1	D. H. Blair	Merchants B. & TrustCo	2,770.00	2600.00
June	8	H. O. Sapp	Merchants B. & TrustCo	2,000.00	1000.00
June	14	E. P. Yates	J. H. Clinard	1,000.00	1000.00

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Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
March	7	Fred Sheetz,et al.	M. S. Kesler	2,500.00	Church
March	1	F. B. Benbow	M. L. Kesler, et als.	5,500.00	Church
March	7	Mary Sue Ethridge	M. L. Kesler, Et als.	1,750.00	Church
March	4	Herbert Vogler	M. L. Kesler, et als.	1,750.00	Church
April		R. J. Jordan	A. A. Jordan	1,000.00	1250.00
May	15	R. J. McCullum	Roy Thomasson	1, 000.00	1000.00
Jan.	24	E. W. Anerum	M. P. Matthews	2,000.00	6200.00
May	27	J. J. Currin	Raymond G. Parker	1,000.00	500.00
Apr.	30	A. V. Nash	John Banner	2,500.00	850.00
May	21	T. W. Watson	Agnes R. Jones	1,100.00	1425.00
Apr.	30	A. V. Nash	S. D. Porter	2,500.00	2000.00
May	27	M. Sosnick	W. J. Hylton	2,000.00	1500.00
May	27	W. V. Hylton	A. Shapiro	5,760.00	600.00
May	4	C. L. Joyner	A. B. Young	1,150.00	1086.00
May	27	Wachovia B. & TrustCo	J. W. Fulp	1,500.00	866.00
May	31	Isaac Washburn	Daisy M. Stack	4,200.00	2500.00
May	11	J. H. Whicker	William W. Foushee	1,000.00	1100.00
Jan.	6	J.L.Roberts	J.G.Neal	2,000.00	1800.00
Jan.	1	Charlie Moore	B.C.Tavis	1,800.00	2000.00
Feb.	14	Cora R. Beckner	Nancy Sides	7,000.00	4670.00
Feb.	18	Flora Swaim	Rachel P. Brown	1,000.00	825.00
June	18	W.T.Whitsett	L.F.Owen	4,000.00	3250.00
June	21	M.P.Watts	J.G.Clayton	4,000.00	4000.00
Apr.	28	W.B. & Tr. Company	Nathan Berlin	2,000.00	1000.00

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Apr.	5	Troy Clemmit	A.A.Hunt		
Apr	22	J. A. Mackie & wife	J.W.Purvis	1,000.00	700.00
Apr	1	E.B.Idol and wife	J.W.Kenny	1,000.00	600.00
Mar	17	Sam Kahre & wife	Max Kahre	2,000.00	1660.00
Mar	14	R.L.Bolton & wife	K.M.Cushion & wife	7,000.00	17000.00
Mar	4	E.B.Idol & wife	John Hedgecock	5,800.00	2900.00
Apr	7	Early Climo & wife	W.H.Dodson	3,000.00	3240.00
Apr	1	Geo. F.Montgomery et al	Banner Ins. Company	1,800.00	1000.00
Apr	21	W.L.Robison	J.A.McDowell	2,000.00	3000.00
Apr	1	J.I.Pfaff & wife	Geo. F. Montgomery	5,000.00	2500.00
Apr	7	Henry H.Bryant & wife	H.L.Bennett	2,000.00	1760.00
Apr	6	Evelyn O Apple et al	Southern L & Dis Co.	1,000.00	400.00
Apr	5	Mrs. Bettie T. Cumbie	G.G.Wall & wife	2,000.00	1800.00
Apr	2	W.J.Wall and wife	M.P.Watts	1,000.00	1200.00
Apr	2	C.S.Johnson	Mrs Margaret R.Clayton	4,000.00	3000.00
Apr	2	C.S.Johnson	Wm. E. Spaugh	1,000.00	400.00
Apr	26	A.B.Elam & wife	Martha A.LeGrande	1,000.00	4600.00
Mar	29	D.H.Blair, Trustee	E.Fuller Conrad	2,000.00	750.00
Apr	7	E.C.Emmore & wife	C.W.Reay	1,070.00	750.00
Mar	22	Mrs. Alice W. Page	T.J.Walker	4,000.00	2750.00
Apr	5	A.V.Nash and wife	Florence Wall	15,000.00	20675.00
Mar	5	J.A.Koontz & wife	Annie S. Koontz	2,800.00	800.00
Apr	4	H.H.Feimster & wife	J.Henry Craft & wife	4,000.00	4200.00
Apr	12	J.M.Swain	H.N.Bell	1,500.00	800.00
Mar	19	M.C.Disher	C.O.Griffin and wife	1,000.00	800.00
Apr	2	C.K.Speck & wife	S.F.Cude	1,000.00	2400.00
Apr	13	C.M.Thomas & wife	Mary T.Grogan	1,000.00	1565.00
Mar	8	J.S.Cowles	Fred Davis & wife	1,000.00	500.00
Apr	8	W.P.Hill & wife	Banner Investment Co	1,000.00	1500.00
Apr	7	Jas. A. Gray and wife	W.R.Clark	1,000.00	650000
Apr	5	W.A.Spear & wife	May Spear	2,000.00	1400.00
Feb	18	Irvin A.Harper & wife	J.R.Gregory	5,000.00	3000.00
Apr	11	A.V.Nash & wife	Mrs. F.O.Braswell	2,800.00	1120.00
Apr	16	R.L.Cox	W.A.Gross	1,000.00	600.00
Apr	18	Rosa Borrier & wife	Gleem Teague	1,000.00	3025.00
Mar	15	A.E.Hooton & wife	Brown Rogers Company	4,250.00	2800.00
Feb	26	T.V.Edmunds & wife	Joseph Kenny	15,000.00	12000.00
Apr	18	E.C.Tevis & wife	Henry Paul Foster et al	4,000.00	2800.00
Apr	21	Dr. Eugene T Cox & wife	W.E.Martin	1,000.00	1000.00
Apr	16	Mrs. Grace Hensel	J.P.Lacy & wife	2,500.00	1950.00
Apr	18	R.A.Pfohl & wife	Amelia Fischer	5,000.00	5600.00
Feb	12	Burton Craige et al	Ida M.Galloway	4,250.00	5000.00
Apr	19	Dr. J.C.Williamson et al	L.C.Kerns	10,000.00	3750.00
Mar	30	W.J.Dillon & wife	E.J.Wishon & wife	2,800.00	1800.00
Apr	1	H.D.Shutt & wife	B.B.Walker	2,500.00	2200.00
Mar	18	Carney W. Mimms et al	B.B.Walker	2,000.00	700.00
Apr	15	H.W.Folts & wife et al	G.F.Turley	6,000.00	5000.00
Apr	20	Mrs. Sadie E Wilson et al	Elizabeth C.VaughanLloyd	1,800.00	750.00
Mar	25	Laura E Kapp et al	M.K.Rubais	4,000.00	4250.00
Feb	22	G.A.Whitaker & wife	S.W.Kagar	1,200.00	3665.00
				4,670.00	3500.00

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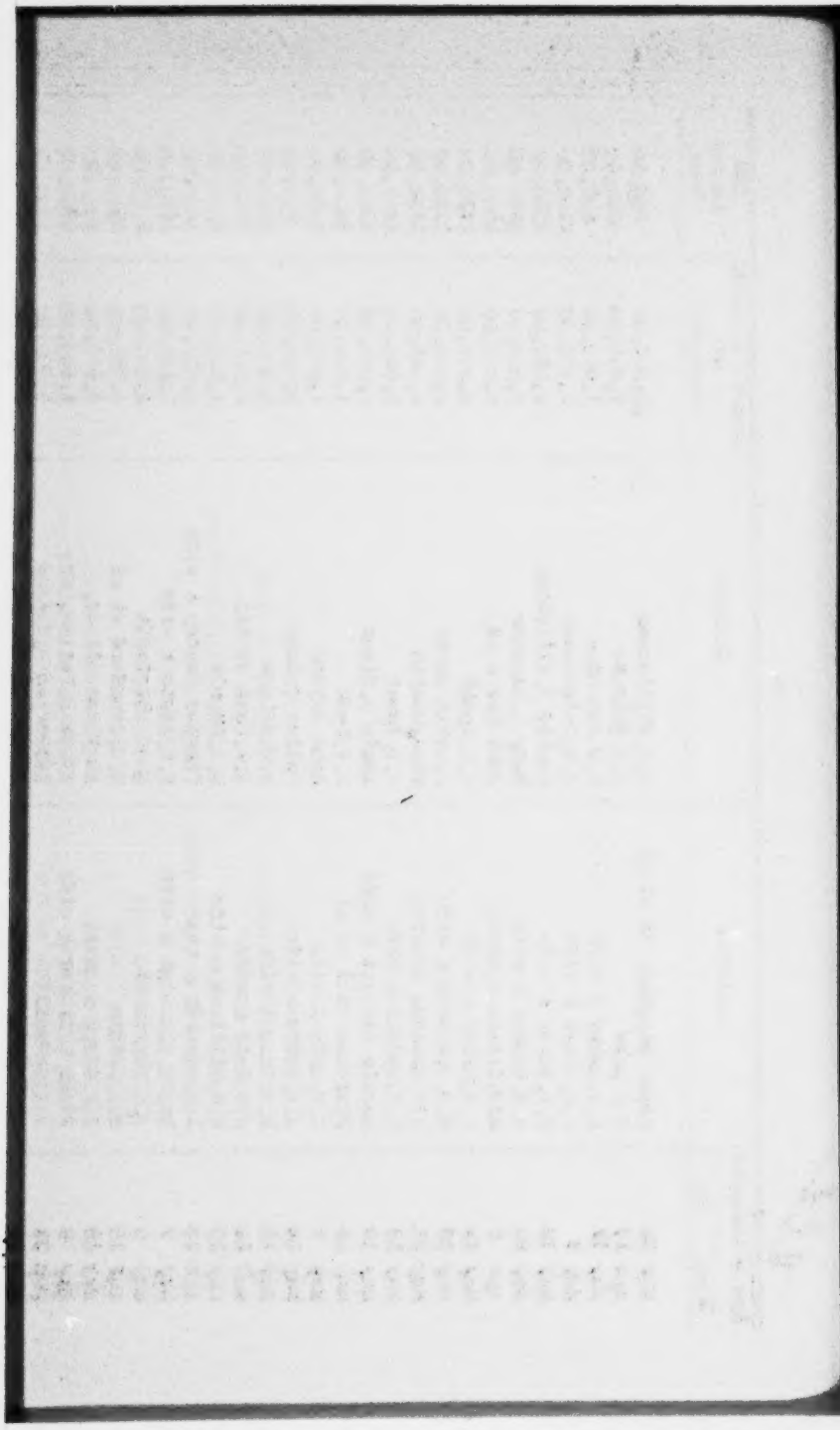
Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Apr	27	C.H.Jones	Emma Anderson	1,000.00	850.00
Apr	22	C.H. Jones	C.W. Williams	2,000.00	2950.00
Apr	25	E.J.Neale & wife	Cobb-Noble Company Inc	4,000.00	3000.00
Apr	7	L.S.Lloyd & wife et al	Cobb-Noble Company	3,800.00	1600.00
Feb	15	The Congregation et al	Twin City Athletics Co.,	13,500.00	1650 .00
Apr	22	Jas.A. Gray & wife	Sentinel Printing Co Co	2,500.00	150 .00
Apr	9	Nat Martin et als	W R Kiser	1,600.00	1600.00
Apr	28	V.E.Barnes & wife	B F Myers, P W Brame et als	12,000.00	3000.00
Apr	27	Ella M.Hinshaw et als	Grady C.Hadley	1,000.00	350.00
Apr	29	W C Hinston & wife	H Clay Harris	5,800.00	4000.00
Apr	28	Geo B. Whitaker & wife	B.H. Blair	7,000.00	3060.00
Apr	1	Mrs. Mary T.Leckett	Eugene Suggle & wife	3,000.00	1100.00
Apr	1	James Johnson	Mattie C.Disher	1,000.00	1500.00
Apr	25	J.F.Hall & wife	F. T. Jones et al	1,000.00	600.00
Apr	25	Jas F Hall & wife	T.J.Swing	1,000.00	500.00
Apr	6	P.F.Horton & wife	Salem Academy & College	2,000.00	1200.00
Mar	7	T.Bryson & wife	B.K.Millsaps	10,500.00	6900.00
Jan	14	.C. Johnson & wife	J.G.Wilson	4,500.00	2400.00
Apr	22	Thos.W.Davis & wife	Woodland Ave.Park Co	9,500.00	12000.00
Jan	11	J.H.Whicker & wife	Lawrence Bryson	2,500.00	1300.00
Apr	20	R.C.B.Linville & wife	City of Winston-Salem	8,500.00	3048.00
Mar	31	David E.Wright	N.Cray Doub	1,000.00	800.00
Apr	11	H.Q.Smith and wife	R.M.Spach	2,000.00	1000.00
Apr	12	C.T.Bagley & Laura	H.C.Tavis	1,500.00	1550.00
Apr	12	Zella Hutchins	Lavian Norwood	1,000.00	480.00
Apr	18	G L Leonard & wife et al	R.C.Barrier & wife	1,000.00	650.00
Apr	16	Thomas A Long and wife	J B Lemons	2,375.00	1700.00
Apr	15	G.L.Pope & wife	J.A.France & wife	1,200.00	2600.00
Mar	11	T.F.Vincennes et als	B B Walker	2,300.00	1800.00
Apr	23	H P Price	M.V.Williams	1,500.00	1000.00
Feb	14	S V Burge & wife	J.K.Slate	2,900.00	900.00
Apr	15	W b Cook & wife	Charles C.Lawson	2,100.00	1750.00
Apr	1	J W Brown & wife	A.W.Davis & wife	8,500.00	6000.00
Apr	1	Mattie C.Disher, Com	James Johnson	1,600.00	1400.00
Apr	30	J R Hastings & wife	J.N.Davis, et al	3,000.00	2250.00
Apr	20	J A P Wolff & wife	Ernest Newsom	2,500.00	2500.00
May	2	J P Lacy & wife	H.C.Snyder	7,812.00	5500.00
Mar	16	J N Ambler & wife	Carney W. Mimms & wife	17,000.00	11250.00
Mar	19	J C Spach & wife	Trustees, S S Bapt.Ch.	2,000.00	1700.00
Feb	2	K C Land & wife	Grace B. Allen	2,500.00	2150.00
May	2	Mrs.Rosa L.Hunnicutt	P.E.Parrish	1,500.00	1500.00
Apr	30	R M Simmons & wife	Chas.F.Snow	6,500.00	3500.00
Apr	13	Geo B. Whitaker & wife	Louis Roush	5,500.00	3500.00
May	2	Clyde C.Culler & wife	L.F.Shinen	5,500.00	3500.00
Apr	28	Bennie F.Evridge & wife	H.L.Lashmit	3,000.00	2400.00
May	5	Luther Kellum & wife	M.Mitchell et als	2,000.00	1000.00
May	5	Frank Powers & wife	Miss Ada Waddell	1,200.00	1000.00
May	7	E.A.Hilton	W.T.Dowell & wife	1,000.00	800.00
Mar	6	A.B.Elam & wife	T.W.Mimms	1,000.00	1275.00
May	2	M.Mitchell et als	T.A.Davis & wife	2,500.00	2400.00
Mar	17	F.L.Poole & wife	Lizzie Brown	8,000.00	4825.00
Mar	23	Archie Aaron et als	J.C.Williamson	1,500.00	1000.00

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Mar	23	Peter Higgins, Sr et al	J.C.Williamson	$1,200.00	650.00
Apr	19	E A Darr	J.E.Kilerbe	7,500.00	4920.00
May	17	J.P.Ashby & wife	T.D.Jennings	1,000.00	600.00
May	9	C.H.Clark & wife	N.D.Poindexter	3,900.00	2500.00
May	19	T.P.Boger & wife	Nealie E.Tillotson	3,250.00	2350.00
May	20	C.M.Thomas & wife	Ruby L.Wagoner	2,000.00	1500 00
Apr	8	Mrs.Lizzie M.Brown	Cobb Noble Co.	5,000.00	4500.00
May	19	H.E.Fries & wife	S.T.Spaah	2,000.00	1625.00
May	19	T.S.Sprinkle & wife	J.Worth Davis	3,000.00	2920.00
May	21	T.W.Watson, Trustee	Thos.Maslin	4,035.00	3750.00
May	18	C.E.Weddle & wife	N.R.Jones	2,600.00	2200.00
May	19	Martin Bennett & wife	Annie B.Glenn	2,000.00	1960.00
May	24	Florence Wall et al	A.V.Nash	1,500.00	1300.00
Mar	7	C.W.Holt & wife	Rohm Snyder	1,500.00	1050.00
May	26	J.A.White & wife	William C.Long	1,000.00	800.00
May	14	W.A.Lutz & wife	W.W.Briggs	3,500.00	2600.00
May	24	C.C.Sale & wife	A.V.Nash et als	2,500.00	1750.00
May	23	W.A.Williams & wife	M.A.Angelo	2,500.00	2000.00
Apr	23	R.L.Edwards & wife	Charles Pentry & wife	1,500.00	1000.00
May	7	Dr. S.D.Craige & wife	E.T.Joyce & wife	3,500.00	2550.00
May	4	J.G.Merriott	Maud Merriott	2,000.00	6450.00
Apr	18	M.H.Jordan	W.G.Cranford et al	4,360.00	3500.00
Mar	18	E.R.Clapp & Annie	American Oil Co.	3,575.00	3000.00
May	9	Frank L.Crater & wife	Frank B.Foster, Jr	1,500.00	1750.00
Feb	21	J.A.McDowell	Katherine D.Roddey	4,500.00	4000.00
May	14	J.S.Culler & wife	Jefferson Monroe et al	2,500.00	1150.00
May	9	W.J.Ebert & wife	Elsie M De Tamble	1,000.00	650.00
May	7	Ella M.Minaker et als	Elsie M De Tamble	1,000.00	650.00
Apr	18	V.M.Swain & wife	Walter C. Greenwood	1,000.00	1000.00
May	14	Frank T Baldwin	E.E.Shumate & wife	5,000.00	2500.00
May	6	Wm.F.Munse & wife	S.M.Vernon	1,000.00	475.00
Apr	4	E.T.Anderson & wife	M.W.Norfleet	1,500.00	750.00
May	9	Frank L.Crater & wife	J.T.Wasley	1,500.00	615.00
May	20	James A. Hutchins & wife	R.C.Ryan	19,000.00	6500.00
Mar	21	James A.Gray et als	Mrs.Grace Hensel et al	12,500.00	8000.00
May	13	Annie C. Hampton	W.C.Northrup	5,500.00	3900.00
May	12	W.B.Phillips & wife	J.H.Turner & wife	1,200.00	1060.00
Apr	16	T.H.Pegram & wife	Mary E.Dowell	2,000.00	1750.00



167 *Affidavit of Philip L. Kainer.*

Filed Jan. 20, 1922.

STATE OF NORTH CAROLINA,
County of Forsyth:

Affiant, Philip L. Kainer, says that he is a resident of Winston-Salem, N. C., having worked in the law offices of C. A. Vogler and Craige & Vogler for several years, and has been a resident of Forsyth County for twenty-eight years; that he has made an examination of all deeds recorded in Forsyth County from January 1, 1921, to June 30, 1921, inclusive, in which the consideration appears to be more than One Thousand Dollars ($1,000), and also of the assessed value of the real estate embraced in said deeds for the year 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration of the conveyance and the assessed value of the said property for the year 1921; that when the considerations shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows: From the amount of Federal Tax imposed and entered on the record, viz.: when the consideration or value of the interest in the property conveyed, exclusive of the value of any lien or encumbrance thereon exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof in excess of $500, 50 cents, and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $484,353.00, and that the total assessed values for taxation for the year 1921 of the properties embraced in said deeds contained in said statement amount to $364,553.00. The statement is attached hereto, initialed and numbered — to —.

PHILIP L. KAINER,
Affiant.

Subscribed and sworn to before me this 14th day of January, 1922.
My commission expires October 5, 1922.
[SEAL.] FRANCES ADAIR JONES,
Notary Public.

Approved:
GRAIGE & VOGLER,
By C. A. VOGLER.

(Here follows table marked pages 168, 169, and 170.)

171 *Affidavit of C. A. Vogler.*

Filed Jan. 20, 1922.

STATE OF NORTH CAROLINA,
County of Forsyth:

Affiant, C. A. Vogler, says that he is a practicing attorney at the Winston Salem Bar, and has been a resident of Winston Salem for 36 years; that he has made an examination of all deeds recorded in the Reg. of Deeds Office of Forsyth County, N. C. from January 1, 1921, to June 30, 1921, inclusive, in which the consideration appears to be more than One Thousand Dollars ($1,000), and also of the assessed value of the real estate embraced in said deeds for the year 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration of the conveyance and the assessed value of the said property for the year 1921; that when the considerations shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows: From the amount of Federal Tax imposed and entered on the record, viz.: when the consideration or value of the interest in the property conveyed, exclusive of the value of any lien or encumbrance thereon exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof in excess of $500, 50 cents, and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $630,512.00, and that the total assessed values for taxation for the year 1921 of the property embraced in said deds contained in said statement amount to $481,586.70. The statement is attached hereto, initialed and numbered — to —.

C. A. VOGLER,
Affiant.

Subscribed and sworn to before me this 14th day of January 1922.
[SEAL.] FRANCES ADAIR JONES,
Notary Public.

My commission expires Oct. 15, 1922.

(Here follows table marked pages 172, 173, and 174.)

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Feb.	17	J. W. Hartman et al	J. H. Wimbish	$3,000.00	3500.00
Feb.	18	H.D.Kester & Wife	T. W. White	3,000.00	2800.00
Feb.	17	Carl F.Nissen & Wife	J.Wilbur Crews & Wife	2,000.00	700.00
Feb.	17	Mrs. Mary J. Weir	J. H. Hellard	1,000.00	300.00
Jan.	22	J.W.Flynt & Wife	J. G. Flynt	2,700.00	1395.00
May	1	J. C.Spach & Wife	G.L.Leonard	2,500.00	1500.00
Feb.	4	A.Lefkewitz & Wife	W.C.Smith	2,000.00	1500.00
Feb.	19	J.M.Yokley & Wife	K.H.Rich	2,450.00	1500.00
Feb.	23	Isaac Dalton,Guardian	Adlophus Stoltz	2,000.00	1921.70
Feb.	23	Adolphus W.Stoltz etal	Grandsian Dalton,Truste	2,000.00	1375.00
Feb.	24	Belle Burke	Timothy Transou	8,000.00	5500.00
Feb.	24	C.H.Jones,Trustee	Armeta S.Willis	4,000.00	2500.00
Feb.	26	W.H.Martin & Wife	D.M. & D.E. Clinard	2,500.00	2100.00
Feb.	24	Mary A.Poindexter etal	Sid Holt	2,000.00	2100.00
Feb.	23	Josephine Reece et al	W.S.Caudle	2,000.00	2120.00
Feb.	24	J.B.Willis & Wife	C.H.Jones,Trustee	1,000.00	850.00
Feb.	25	A.B.Fulton & Wife	W.A.Bell & Wife	3,000.00	2000.00
Feb.	11	W.H.Long & Wife	C.E.Hunter	3,700.00	4000.00
Feb.	26	H.E.Oehman & Wife	C.L.Nichols & E.A.	2,500.00	2500.00
Jan.	26	R.C.Perry	M.C. Venable	2,000.00	1500.00
Feb.	24	Errett Straley et al	C.C.Smithdeal	8,000.00	4100.00
Feb.	23	Freeman J.Thomas	T.B.Scott	3,000.00	1250.00
Feb.	28	S.L.Brown & Wife	J.W. Grey	2,500.00	1650.00
Feb.	17	M.A.Walker,Jr.	R.I.Dalton	15,000.00	13000.00
Feb.	17	M.A.Walker,Jr. & Wife	S.Clay Williams	40,000.00	29500.00
Mar.	1	T.F.Westmoreland,Adm	W.M. Vantroy	1,125.00	3300.00
Feb.	28	John G.Daniels et al	John S. Phelps	1,200.00	1377.00
Mar.	3	William T.Eddings etal	W.O.Gilbert	1,000.00	1100.00
Mar.	3	J.E.Hege et al	A.V.Nash	1,500.00	1400.00
Mar.	3	J.G.McCuiston	M.E.Propst	1,000.00	930.00
Mar.	2	Hazel D.Norfleet et al	J.E.Kennerley	4,500.00	1500.00
Feb.	23	B.L.Nelson & Wife	J.A.Murry	3,000.00	2465.00
Mar.	1	J.L.Wimbish & Wife	Farm Development Co.	20,000.00	14500.00
Feb.	28	John L. Wimbish	F.N.Hanes	10,000.00	8000.00
Feb.	28	John L. Wimbish	F.W.Hanes	4,000.00	5100.00
Mar.	1.	Mrs.P.C.Johnson et al	C.P.Johnston & Wife	3,500.00	2500.00
Mar.	3	J.A.Koontz & Wife	Anna S.Koontz	3,000.00	750.00
Mar.	1	J.C.Walker & Wife	Sam F. Vance	5,000.00	2250.00
Feb.	25	J.G.Wimbish & Wife	Frank Raiff	15,000.00	13500.00
Feb.	1	J.M.Ingram	Maggie Flynt Ingram	1,000.00	750.00
Mar.	4	W.A.Joyner & Wife	John Clinard	3,000.00	1700.00
Mar.	3	W.L.Jones & Wife et al	S.P.Wright	1,675.00	1050.00
Feb.	15	Ernest Kiger & Wife	Bell Mayton	1,350.00	1200.00
Mar.	3	G.L.Leonard & Wife	J.V.Macy	2,500.00	2500.00
Mar.	2	John W.Marshall et al	Chas. H.Marshall et al	7,000.00	6500.00
Mar.	3	C.M.Bernard & Wife	Frank Raiff & Wife	15,000.00	13000.00
Mar.	7	S.H.Speas	J.T.Speas	3,000.00	6000.00
Mar.	3	T.B.Stanley et al	Frank T.Baldwin	3,500.00	2400.00
Mar.	3	Thomas W. Allen & Wife	Majorie Roth Kennickell	4,000.00	2000.00

Mar. 15	Agnes H.Davis	W.L.Nifong	1,000.00	750.00
Jan. 17	Laura J.Hall et al	Wm.T.Boger & Wife	1,100.00	890.00
Mar. 14	R.J.Jordan & Wife	C.W.Mimms	1,000.00	6000.00
Mar. 12	Leslie O.Kirkman	F. J. Thomas	2,000.00	1500.00
Mar. 15	Elsie H.Livengood etal	D.W.Magie	12,000.00	7500.00
Mar. 17	D.M.Smith	C.H.Cowles	2,500.00	1400.00
Mar. 17	J.A.White & Wife	Harvey White	1,000.00	750.00
Mar. 17	Lindsay Fishel & Wife	T.R.Jenkins & Wife	1,100.00	1000.00
Mar. 17	J.O.White & Wife	H.A.Pfohl et al	2,500.00	1200.00
Mar. 1	Ham Hester & Wife	Thomas M. Bowman	2,500.00	1615.00
Mar. 14	J.G.Wall & Wife	C.J.Livengood	3,000.00	2400.00
Mar. 17	E.S.Porter & Wife	Pilot Real Estate Co.	2,500.00	1800.00
Mar. 15	A.V.Nash & Wife	Julius D. Neely	1,600.00	1000.00
Mar. 15	Thos. H. Haskins & Wife	L.B.Womble	4,000.00	2750.00
Mar. 15	Sarah B.Hurdle et al	L.C.Hubson	4,500.00	4000.00
Mar. 12	C.S.Cude & Wife	S.E.Hauser	3,000.00	2575.00
Mar. 22	B.C.Brock & Wife	S.Carter Williams	1,500.00	600.00
Mar. 18	Mary Sue Etheridge	A.L. & Sallie Powell	3,000.00	2500.00
Mar. 22	C.L.Bigby & Wife	Wm.H.Neal	2,500.00	2140.00
Mar. 22	G.H.Craft & Wife	O.R.Penny & Wife	1,000.00	500.00
Mar. 5	J.C.Womack	W.M.Hanes	33,000.00	21700.00
Mar. 23	J.M.Newberry & Wife	J.C.Womack,Sr.	9,600.00	7350.00
Mar. 24	H.W.Huffman & Wife	James C. Gatewood	1,000.00	800.00
Mar. 21	Mildred Baynes et al	W.R.Pendry	5,000.00	2700.00

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Mar.	8	J.M.Brown & Wife	R.S.Miller & Wife	$2,000.00	1100.00
Mar.	8	L.C.Crotts & Wife	B.H.McCrary	2,500.00	2200.00
Mar.	7	Minnie H.Fitzgeraldetal	Aubrey R.Flynt et al	1,100.00	750.00
Mar.	2	A.B.Cook & Wife	T.C.Pritchard	1,000.00	600.00
Feb.	28	J.W.Guy & Wife	Mytie Baugess	1,500.00	1500.00
Mar.	14	C.G.Thornlaw,Adm.	J.F.Bodenheimer	1,405.00	1300.00
Feb.	15	Robt. Patterson et al	C.S.Cude & Wife	2,750.00	2575.00
Feb.	15	Hinshaw Heirs	Dunklee & Alexander	17,000.00	9335.00
Mar.	9	C.L.Holland et al	M.H.Willis	1,700.00	1320.00
Mar.	7	R.F.McNeil et al	Devoe C.Clinard	2,000.00	1700.00
Jan.	20	C.E.Hunter & Wife	J. P. Nance	2,000.00	1300.00
Mar.	12	Laura F. Miller et al	W.G.Jerome	1,500.00	2575.00
Mar.	12	W.P.Reid	Allie Gooch Reid	3,000.00	4300.00
Mar.	9	Helen Nissen Froelichetal	J.Wilbor Crews etal	1,500.00	875.00
Feb.	15	Patterson Exec.	T.G.Trivette	2,275.00	2075.00
Mar.	14	W.M.Perabee & Wife	Planters Ind.Tob WHCo.	2,000.00	2000.00
Mar.	3	J.A.Mackie & Wife	J.E.Kennerley	2,000.00	1500.00
Mar.	12	N.J.Teague & Wife	J.R.Weaver & Wife	2,500.00	1500.00
Mar.	1	Sadie M.&LettieE.Green	Cobb Noble Company	1,000.00	700.00
Mar.	15	J.W.Hester & Wife	L.C.Dula & Wife	2,200.00	2400.00
Feb.	9	H.R.Jordan	C.H.Harden & Wife	2,500.00	1600.00
Mar.	15	S.C.Ripple & Wife	C.W.Rothrock	6,500.00	4875.00
Mar.	14	J.R.Weaver & Wife	J.R.Owen & Wife	1,400.00	1100.00
Jan.	1	David White et al	H.R.L. Ins. Company	76,500.00	54000.00
Mar.	11	W.P.Reid	J.H.Clement	1,000.00	1500.00
Mar.	16	Geo.M.Kake	Allen L.Lemons	2,500.00	1500.00
Mar.	8	J.A.McDowell	T.J.Simpson	8,500.00	4500.00

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
Mar.	9	Lettie Levy	Mike Levy	4,000.00	3850.00
Mar.	19	W.O.Gilbert & Wife	Mars Sarah L.Kallam	6,500.00	3500.00
Mar.	23	Sallie Styers	E.D.Myers & Wife	1,000.00	1800.00
Mar.	25	Geo.E.Davis & Wife	J.H.Newberry	2,500.00	1500.00
Mar.	19	S.P.Sale & Wife	A.V.Nash	1,400.00	800.00
Mar.	29	J.T.Knouse & Wife	Thomas Maslin	3,500.00	5000.00
Mar.	29	Mrs. Mary S.Vance etal	H.F.Samuels	4,000.00	2250.00
Mar.	25	Hinshaw Heirs	Lucien Fulton	4,000.00	1748.00
Mar.	17	Sallie Powell et al	Annette W.Chance	4,500.00	2500.00
Apr.	1	A.B.Elam & Wife	John H. Kirk	1,500.00	1250.00
Mar.	22	E.H.Holton et al	E.E.James et al	7,500.00	7000.00
Mar.	16	G.H.Croft	L.A.Reynolds	1,000.00	325.00
Mar.	25	K.M.Cashion & Wife	Annie S. Disher	9,500.00	3850.00
Mar.	30	A.R.Bridges & Wife	R.R.Morgan	1,000.00	600.00
Mar.	18	Congregation of U.B	C.T.Lineback	2,000.00	1400.00
Mar.	17	C.T.Joyce & Wife	Mrs. O.T.Brown	3,000.00	1500.00
Mar.	26	W.S.Lindsay & Wife	Errett Straley	6,000.00	1500.00
Mar.	31	Geo.W.Coan,Sr. et al	Henry Harris & Wife	16,500.00	12125.00
Mar.	26	S.L.Jenkins & Wife	Chas. Graner & Wife	6,000.00	3750.00
Mar.	22	S.W.Kager & Wife	Rosa Levy	1,500.00	1200.00
Mar.	15	A.C.Cline & Wife	E.C.Hege	1,400.00	1275.00
June	7	J.H.Faries & Wife	E.A.Bovenier	2,500.00	1950.00
May	1	Arch B.Taylor & Wife	James W.Minter et al	2,000.00	1600.00
Jan.	5	Louise J. Wall et al	Eva Wall	2,864.00	2200.00
June	22	J.E.Kennerly & Wife	Walter Dickson	8,000.00	6000.00
May	1	R.M.Hanes & Wife	Mrs. Gertrude Brinkley	5,500.00	4500.00
June	15	J.J.Leight & Wife	Orinoco Supply Co.	3,000.00	3030.00
Apr.	9	W.E.Everidge & Wife	C.D.Carroll	1,500.00	200.00
May	25	N.B.Braswell exc.	B.F.Pulp & Wife	1,500.00	750.00
Jan.	24	J.B.Hughes & Wife	T.H.Murray	1,500.00	700.00
Mar.	11	W.H.Ball & Wife	J.A.Thomas	2,000.00	6500.00
June	27	Philip Deitz & Wife	Chas. F.Deitz	8,000.00	600.00
Apr.	30	S.T.Moses & Wife	E.M.Hartman	n 1,800.00	2100.00
Mar.	30	John G.Fulton & Wife	O.L.Gerrey	1,000.00	2300.00
May	19	H.J.Clinard & Wife	Frank Eavens	2,000.00	1685.00
June	27	H.C.Flynt & Wife	Joe F.Grubbs	1,000.00	865.00
Mar.	11	C.E.Ebert & Wife	Wm.C.Taylor	1,093.00	350.00
June	11	Oscar M.Teague	Clara L.Teague	1,500.00	1500.00
June	16	John H.Smitherman etal	O.W.Baynes	2,000.00	800.00
June	11	W.H.Foster & Wife	Mattie Carter	2,000.00	1125.00
June	2;	E.A.Kreeger & Wife	J.C.Graham,Jr.	1,000.00	3080.00
Apr.	19	JohnJordan	L.A.Jordan	1,000.00	700.00
Mare	18	JE.Williams & Wife	Grady C.Stone	1,000.00	500.00
June	20	C.M.Thomas & Wife	F.L.Sanders & Wife	1,500.00	500.00
Feby	15	Robert Paterson et al	E.S.Cude	2,275.00	2175.00
Apr.	30	Thorn Warner	J.N.Davis & Wife	1,000.00	1020.00
June	2	Mrs. W.S.Hooper et al	Charlie Walser & Wife	1,250.00	700.00

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Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
June	1	Thos. H. Battle et ux	H. L. Battle ($5. tax)	$5,000.00	$3,400.
Jan.	1	C. B. Braswell et ux	R. M. Collins	7,500.00	3,862.
"	10	Sammie Joyner, Jr.	Dovie Joyner	1,000.00	1,250.
"	10	Arthur Arrington et ux	J. A. Freeman	1,900.00	937.
"	7	J. F. Raynor et ux	J. T. Nichols	7,000.00	2,100.
"	14	Dr. H. Brantley et ux	J. C. Brantley	10,000.00	2,437.
"	7	R. L. Bryant	J. W. Finch	12,050.00	3,985.
"	25	G. K. Batchelor et ux	J. C. Batchelor	1,700.00	688.
"	19	V. J. Perry	H. L. Bailey	3,000.00	1,263.
"	28	H. E. Brewer et ux	J. M. Batts	1,250.00	350.
"	31	Milley Woodley et als	T. A. Cooper	2,000.00	1,850.
"		D. B. Faison et ux	Isabel Faison	4,000.00	2,400.
Feb.	1	J. G. Daniel et ux	Mullie B. Daniel et al	1,522.50	700.
Jan.	21	B. F. Winstead et ux	Bulluck Furniture Co.	4,725.00	3,400.
"		A. B. Capps et ux	E.W. & Z.B.Bulluck	4,000.00	3,687.
Feb.	4	W. A. Finch, Trustee	Stephen Eatman	2,000.00	1,337.
Jan.	1,	John H. Taylor et als	Beulah J. Fuller	1,400.00	500.
Feb.	4,	F. R. Joyner et ux	L. A. Baker	3,000.00	2,240.
"	11,	Z. H. Wheless et ux	R. D. Bowden	1,250.00	975.
"	14	O. D. Fisher et ux	J. O. W. Gravely	2,000.00	1,060.
"	15	T. T. Thorne, Trustee	T. L. Bland	1,725.00	700.
"	16	J. P. Bunn, Trustee	W. H. Davis	4,600.00	1,750.
"	22	Fred Watson et ux	H. L. Hicks	8,500.00	4,400.
"	24	A. H. Hilliard et ux	J. J. Rollins	2,000.00	1,440.
"	10	J. E. Lane	Z. B. Bulluck ($3. tax)	3,000.00	1,375.
"	15	A. S. Vick	Allie S. Cornwell	1,800.00	900.
"	26	L.L.Davenport, Trustee	G. W. Joyner	5,000.00	2,350.
"	10	Jesse E. Scott et ux	J. M. Fox	2,100.00	1,440.
Mar.	11	E. L. Boone	W. B. Rice	1,500.00	640.
Jan.	3	J. T. Oakey	W. C. Gilliam	4,000.00	2,400.
Mar.	12	C. F. Rich, Trustee etc	W. B. Williams	1,255.00	637.
"	22	T. A. Avera, Trustee	R. K. Bryant	7,000.00	3,680.
"	25	W. R. Patterson et ux	J. P. Duncan	2,371.00	1,387.
"	16	Addie Parris	Lucinda B. Babcock	1,050.00	560.
"	21	M. T. Strickland et ux	L. T. Vaughan	26,301.24	5,320.
"	28	G. L. Pitt	C. E. Pitt	4,000.00	2,625.
Feb.	14	M.V.Barnhill, Comr.	E. R. Dew	2,825.00	2,400.
Mar.	30	B. W. Upchurch	Jacky Ann Bone	1,075.00	250.
"	8	L. T. Penniman	D. J. Rose	4,000.00	2,400.
Apr.	13	J. D. Odom	S. E. Ballentine	2,400.00	900.
Feb.	24	J. L. Cornwell, Sheriff	W. C. Taylor	3,500.00	3,022.
Apr.	9	W. L. Thorpe et als	J. T. McGowan	4,000.00	1,500.
"	20	J. T. Boseman et ux	T. L. Vernon	3,000.00	1,700.
"	26	M. V. Barnhill, Comr.	W. J. Archbell	1,017.50	808.
"	20	B. J. Downey et ux	Evangaline BouFarrah	3,500.00	1,394.
Jan.	26	Wade Chestnut et ux	Sarah Johnson et al	1,500.00	640.
Apr.	15	S. F. Austin, Trustee	R. L. Baker	20,000.00	8,860.
"	15	S. F. Austin, Trustee	R. L. Baker	5,000.00	875.
"	15	B. J. Dunning et ux	Dora Earl Neas	5,500.00	2,280.
"	28	W. B. Rice	W. D. Rice	1,600.00	640.
May	18	W. C. Vaughan et ux	Sudie Lamm	3,000.00	2,250.
Feb.	22	J. K. Smith	L. B. Joyner	1,500.00	1,025.
Apr.	18	L. E. Braswell	C. C. Long et ux	3,500.00	1,050.
May	14	W. L. Thorpe et als	Bessie H. Fleming($5 tax)	5,000.00	3,160.
"	25	R. T. Jeffreys	E. I. Fleming	2,065.00	600.

Date of Conveyance Month	Day	GRANTOR	GRANTEE	January 1 to June 30, 1921 Consideration	1921 Assessed Value
June	7	Chrissie Girdwood	C. B. Spruill et al	$3,500.00	$750.
"	18	J. J. Joyner	F. W. Ham et al	1,450.00	500.
"	27	Ruffin Liles	Middlesex Supply Co.	1,245.50	875.
"	1	Elizabeth G. Hilliard	W. T. Pate	2,000.00	1,020.
"	27	John T. Taylor et als	Katharine G. Goddard	1,050.00	480.
"	21	Ry Mt Sav & Trust Co.	W. B. Williams	3,340.00	1,600.
Apr.	6	D. J. Rose et ux	Neta P. Rose ($2. tax)	2,000.00	600.
Jan.	1	W. D. Boseman et ux	F. P. Spruill	7,600.00	1,900.
Feb.	18	M. Tant et ux	Mrs. J. A. Sykes	3,500.00	1,875.
Jan.	1	E. F. Vester et ux	J. A. Tunnell	5,000.00	1,712.
"	3	P. A. Holden et ux	F. C. Winters	3,300.00	1,200.
"	1	Sam Liles et ux	R. H. Ferrell	2,500.00	687.
Feb.	1	J. E. Freeman	J. A. Freeman	2,500.00	1,320.
"	1	John T. Vick	Mattie J. Vick	1,600.00	2,315.
"	14	J. B. Green et ux	I. Woodall Rose	1,250.00	300.
"	10	T. D. Williams et ux	W. B. Williams	1,500.00	676.
"	2	R. D. Bowden	Alverranda Bowden	1,500.00	875.
Jan.	1	Mrs. Florence A. Philips	E. G. Battle	27,500.00	11,513.
Feb.	25	W. G. Harper et ux	D. J. Rose	5,450.00	2,000.
"	25	R. C. Hunt et ux	S. J. Bartholomew	4,000.00	2,125.
Mar.	3	T. L. Bland et ux	Claude V. Harris	1,600.00	700.
Jan.	12	C. E. Jackson et ux	Alice Pridgen	3,000.00	1,200.
Mar.	14	R. R. Whitley et ux	W. B. Bergerson	1,222.69	362.
Jan.	1	S. J. Bartholomew et ux	W. M. Morgan	11,700.00	5,960.
Feb.	12	F. A. Lewis	J. A. Lewis	3,000.00	1,000.
"	26	J. B. Ramsey, Trustee	P. C. Vestal	11,200.00	4,750.
Mar.	12	Fisher & Williams	J. T. Fisher, 2/3 int	4,000.00	3,566.
Jan.	14	E. P. Utley et ux	M. J. Hedrick	1,250.00	400.
Apr.	20	J. W. Hines	Lula S. Rives	2,000.00	1,300.
Mar.	3	H. G. Sanders et ux	W. E. Sanders	1,500.00	762.
June	11	L. H. Grimes et ux	M. R. Braswell et als	6,500.00	2,500.
Feb.	10	W. W. Denton et ux	H. L. Bailey ($2.50 tax)	2,500.00	843.
"	25	W. G. Harper et ux	C. V. Williams ($4. tax)	4,000.00	3,400.

175 *Affidavit of J. P. Bunn.*

Filed Jan. 20, 1922.

STATE OF NORTH CAROLINA,
County of Nash:

Affiant, J. P. Bunn, says that he is ——, and has been a resident of Nash County for 44 years; that he has made an examination of all deeds recorded in Nash County from January 1, 1921, to June 30, 1921, inclusive, in which the consideration appears to be more than One Thousand Dollars ($1,000), and also of the assessed value of the real estate embraced in said deeds for the year 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, the name of the first grantor, the name of the first grantee, the consideration of the conveyance and the assessed value of the said property for the year 1921; that when the considerations shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows: From the amount of Federal Tax imposed and entered on the record, viz.: when the consideration or value of the interest in the property conveyed, exclusive of the value of any lien or encumbrance thereon exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof in excess of $500, 50 cents, and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total assessment made on account of the tract conveyed; that the total considerations so obtained for all deeds examined and contained in said statement amount to $361,740.43, and that the total assessed values for taxation for the year 1921 of the properties embraced in said deeds contained in said statement amount to $165,891.00. The statement is attached hereto, initialed and numbered — to —.

J. P. BUNN,
Affiant.

Subscribed and sworn to before me this 13th day of January, 1922. My commission expires Jany. 6, 1924.

[Seal of Edwin C. Smith, Notary Public, Ash County, N. C.]

EDWIN C. SMITH,
Notary Public.

(Here follows table marked pages 176 and 177.)

Filed Jan. 24, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS et al.

C. J. O'Brien, being duly sworn, says that he has brought together the information shown in the attached affidavits, for the several Counties of North Carolina, set opposite the name of each affiant, and finds that said affidavits show:

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Alamance	B. M. Rogers	$517,606.00	$355,184.00	68.62
Alexander	J. P. Crouch	50,175.00	24,860.00	49.54
Alleghany	E. L. McMillan	97,167.56	70,088.00	72.13
Anson	Fred J. Coxe	111,603.42	67,721.00	60.68
Ashe	C. W. Higgins	225,374.89	122,591.00	54.39
Avery	Avery Goodman	63,480.50	52,975.00	83.45
Beaufort	Chas. M. Weeks	555,540.00	393,592.00	70.84
Bertie	P. T. Perry	304,883.80	153,828.00	50.46

Bladen	D. B. Johnson	131,930.00	123,267.00	93.40
Brunswick	L. J. Poisson	61,610.00	44,600.00	72.39
Buncombe	George H. Wright	3,261,452.00	2,255,839.00	69.16
Burke	George H. Battle	96,380.00	51,268.00	53.19

179

Cabarrus	John H. Oglesby	146,619.00	90,602.00	61.78
Caldwell	John M. Crisp	85,905.00	74,960.00	87.26
Camden	P. G. Sawyer and M. B. Simpson	107,200.00	47,024.00	43.85
Carteret	D. W. Morton	121,433.00	119,800.00	98.66
Caswell	E. F. Upchurch	92,506.00	56,660.00	61.25
Catawba	Klutz B. Clippard	369,116.00	211,231.00	57.22
Chatham	Jas. L. Griffin	99,445.00	58,594.00	58.90
Cherokee	W. M. West	128,522.00	84,042.00	65.39
Chowan	R. W. Boyce	106,545.00	97,300.00	91.32
Clay	Wayne L. Swanson	54,550.00	39,010.00	71.51
Cleveland	R. L. Weathers	428,109.35	301,044.00	70.30
Columbus	L. V. Grady	228,820.00	167,222.00	73.08
Craven	Wm. Dunn, Jr	379,831.66	310,610.00	81.77
Cumberland	E. L. Hall	414,122.03	270,615.00	65.35
Currituck	P. G. Sawyer and M. B. Simpson	108,781.86	72,210.32	66.37
Dare		.....	.....	....
Davidson	W. H. Phillips	478,760.00	258,653.00	54.02
Davie	J. S. Daniel	35,438.00	28,308.00	79.88
Duplin	H. L. Stevens	87,165.00	62,250.00	71.41
Durham	M. G. Markham	492,250.00	336,532.00	68.40
Edgecombe	J. L. Bridgers	209,382.24	133,055.00	63.00

Affidavit of C. J. O'Brien.—Continued.

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Forsyth	Phillip L. Kainer..... R. G. Parker..... C. A. Vogler.....	2,139,311.57	1,526,368.70	71.34
Franklin	Hugh W. Perry.....	75,458.29	43,472.00	57.60
Gaston	Cecil C. Cornwell.....	202,167.00	136,974.00	67.70
Gates	P. L. Hoffler.....	133,575.00	84,760.00	63.45
Graham	A. H. Eller.....	39,904.50	17,486.00	43.82
Granville	C. G. Powell.....	272,387.87	141,930.00	52.10
Greene	.....	.....	.....	....
Guilford	John H. McAdoo.....	2,337,104.00	1,627,041.00	69.61
Halifax	R. C. Dunn.....	237,303.50	125,777.50	54.69
Harnett	J. C. Clifford.....	116,685.00	70,045.00	60.03
Haywood	T. Troy Wyche.....	221,720.83	129,342.00	58.33
Henderson	Mrs. J. E. Bishop.....	678,562.05	591,194.05	87.12
180 Hertford	J. E. Vann.....	100,226.00	67,268.00	67.12
Hoke	Oscar Leach	24,042.25	22,325.00	92.85
Hyde	Elmo Mann	84,712.50	60,905.00	71.90
Iredell	John L. Millholland.....	224,435.00	155,250.00	69.17
Jackson	Raymond R. Nicholson...	190,967.00	44,125.00	23.10
Johnston	E. F. Ward.....	382,507.56	224,047.25	58.57
Jones	John R. Barker.....	204,486.00	117,763.00	57.58
Lee	D. E. McIver.....	90,027.00	74,457.00	82.70
Lenoir	C. W. Pridgen.....	212,579.06	191,465.00	90.06
Lincoln	John E. Hoover.....	217,764.00	111,146.00	52.40

Macon	J. F. Ray	32,275.00	19,775.00	61.26
Madison	J. Will Roberts	29,780.00	18,327.00	61.54
Martin	H. W. Stubbs	623,064.03	238,679.00	38.31
McDowell	H. R. Ledbetter	93,675.00	54,480.00	58.16
Mecklenburg	Geo. M. Phifer	3,169,115.25	1,815,279.50	57.28
Mitchell	J. D. Pannell	93,991.00	65,056.00	69.21
Montgomery	W. L. Wright	244,638.00	158,764.00	64.89
Moore	N. A. McKeithen	210,678.00	119,410.00	56.70
Nash	J. P. Bunn	361,740.43	165,891.00	45.85
New Hanover	Wm. L. Smith	989,207.00	866,550.00	87.60
Northampton	P. F. Calvert	54,848.00	48,620.00	88.64
Onslow	Frank Thompson	82,418.00	75,475.00	91.46
Orange	J. F. McAdams	162,269.00	120,706.00	74.38
Pamlico	G. V. Rawls	41,150.00	15,556.00	37.80
Pasquotank	P. G. Sawyer and M. B. Simpson	188,681.15	126,778.00	67.14
Pender	J. T. Bland	90,000.00	64,885.00	72.90
Perquimans	W. F. C. Edwards	95,002.00	87,775.00	92.39
Person	A. P. Clayton	59,124.00	45,570.00	77.07
Pitt	C. F. Manning — J. C. Gaskins	459,976.50	383,157.00	83.00
Polk	W. C. Hague	40,743.20	28,929.00	71.00
Randolph	John M. Brittian	235,365.00	135,150.00	57.42
Richmond	H. V. Guthrie	80,070.00	55,610.00	69.40
Robeson	Wade Wishart	119,272.00	68,004.00	57.00
Rockingham	Nurna Winstead	815,821.00	524,584.00	64.30
Rowan	Max L. Barker	179,097.90	130,391.75	65.52
Rutherford	M. T. Wilkie	106,706.93	79,672.00	74.70
Sampson	H. A. Grady	222,556.00	110,837.00	49.80
Scotland	T. J. Dunn	61,200.00	39,561.00	64.64

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Stanly	George P. Palmer	151,374.00	119,256.00	78.78
Stokes	N. Earl Wall	169,465.00	100,339.00	59.20
Surry	B. F. Folger	198,624.00	108,860.00	54.80
Swain	D. E. Nichols	55,435.00	40,374.00	72.83
Transylvania	Roland Owen	39,950.00	24,870.00	62.25
Tyrrell	A. Melson	48,603.33	34,232.00	70.41
Union	M. L. Flow	473,906.00	331,924.00	70.00
Vance	Robert G. Kittrell	500,066.00	307,311.00	61.50
Wake	H. E. Glenn	810,175.00	716,648.00	88.45
Warren	E. C. Price	131,427.33	69,200.00	52.60
Washington	Z. V. Norman	112,102.50	58,230.50	51.95
Watauga	T. E. Bingham	207,632.00	133,018.00	64.07
Wayne	D. E. Grantham	244,675.00	87,851.00	35.91
Wilkes	Frances Hendren	113,512.40	66,214.00	58.33
Wilson	R. L. Brinkley	304,964.00	191,107.00	63.44
Yadkin	John D. Reece	71,495.00	48,128.50	67.31
Yancey	C. C. Caraway	194,974.00	173,972.00	89.22
Total		$30,598,475.24	$20,373,684.04	66.58

C. J. O'BRIEN.

Subscribed and sworn to before me, this 24th day of January, 1922.
[SEAL.]

R. L. BLAYLOCK,
Clerk U. S. Court.

182 *Affidavit of Members of Former Tax Commission of N. C.*

Filed Jan. 24th, 1922.

STATE OF NORTH CAROLINA,
Wake County:

W. T. Lee, George P. Pell and A. J. Maxwell make this statement under oath.

That in the years 1919 and 1920 W. T. Lee, George P. Pell and A. J. Maxwell were members of and constituted the State Tax Commission, W. T. Lee being Chairman of the State Tax Commission, and had and exercised the duties and responsibilities conferred upon them by Chapter — of the Public Laws of 1919 and by Chapter 84 of the Public Laws of 1919, and as the State Tax Commission exercised the powers and duties of a Board of Appraisers of all properties, located within the State of North Carolina, of all railroad companies (excepting certain incidental properties of such companies assessed by local authorities) and also had and exercised supervision of the valuation of all real property of every kind and of the listing and valuation of all personal property of every kind in all counties of the State. In the supervision of the listing and valuation of such properties by local assessing officers, under the laws hereinbefore referred to, it was the purpose to have all lands listed and valued equally at the true value of such lands, and assessing officers were required to ascertain the actual sales value of lands, where there had been a recent sale, and to use the information thus obtained, as well as all other information obtainable, in finding the actual true value of such lands on the first day of May, 1919, and in estimating the value of other similar lands, in cases where there had been no recent sales, and that as to industrial plants of all kinds and the tracks, structures, buildings and equipment of railroad companies—properties which had not been subject to unit sales as a whole and the value of which could not therefore be determined with relation to an actual sale of such properties—it was the purpose to require, and the State Tax Commission did in so far as it could reasonably do so, require the owners of industrial plants and railroad companies, to furnish information on forms prepared by experienced persons employed by the State Tax Commission,

183 complete detailed information, under authority of section thirty-one of Chapter 85 of the Public laws of 1919, of the cost of reproduction of such industrial plants on the price level of May 1, 1919, and as to railroads the cost of reproduction of the properties of such companies new (on May 1, 1919), including side tracks, double tracks, and all properties owned by such companies in this State, less reasonable depreciation for such of its properties as had depreciated in value, and also information as to capital stock, bonds and other indebtedness, earnings, and so on.

The Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk Southern Railroad Company, in response to demands made

upon them for specific and detailed information as to the cost of reproduction of the properties in this State of each of these companies, did file with the State Tax Commission certain sets of figures, now on file with the Commissioner of Revenue, but did not pretend that such figures even approximated the cost of reproduction of the properties owned by these companies, or either of them, in this State, in the year 1919, but, on the other hand, insisted that it would not be possible for them to furnish this information at any reasonable cost or at any cost within a period of several years. The State Tax Commission, therefore, did not have the benefit of this specific detailed information with respect to the value of the particular properties in this State of these several railroad companies which it did have with respect to, and used in, the valuation of properties of industrial enterprises within the State, and of necessity had to form its valuation of the properties of these companies without having this information and by making the best use that it could of other information furnished by these companies and information on file with and in the records of the North Carolina Corporation Commission.

One of the evidences of value submitted for consideration, by each of these companies was what is technically known as "investment accounts" of these companies, not within the State of North Carolina, but throughout the entire system of railroads owned
184 by them in many states other than North Carolina; and it was insisted by them that the proportion of their total investment account which their main line mileage within the State of North Carolina bore to the total main line mileage of each of these several railway systems throughout the several states in which they operated would give a fair value of the property of such companies within the State of North Carolina, except that it was insisted that they had larger and more expensive terminal facilities outside the State of North Carolina than they had at any one point within the State of North Carolina, and that for this reason the straight mileage proportion of their investment account would be more than a fair proportion for this State.

The State Tax Commission was not able to agree with them that this method would fairly determine the value of their properties within the State of North Carolina, for that, first, their investment accounts represented investments made in the properties going back through a long period of years to their original organizations, and such investments having been in a large part made in years when the general price level of materials, commodities and labor was very much lower as during the year 1914 than the price level for materials, commodities and labor was on May first 1919 and 1920; and for that, second, a straight mileage proportion of their lines did not, in our opinion, accurately or fairly represent the actual value of the properties of either the Southern Railway Company, the Atlantic Coast Line Railroad Company or the Seaboard Air Line Railway Company within the State of North Carolina, the lines of these companies within North Carolina having a much greater value than an average based upon the mileage for their entire systems, in that

they have a larger proportion of double track main line mileage in North Carolina than for their entire systems, and in that both the gross and net earnings of each of these railway lines within the State of North Carolina is much greater than the average gross and net earnings per mile for their entire system. All of this was duly considered by the Commission in proportioning, dividing,
185 and determining the valuation of the property of the said railroads in North Carolina as provided by law.

For the years 1918, the last calendar year prior to the first day of May 1919, the excess net earnings per mile within the State of North Carolina of each of these railway companies in excess of the net earnings per mile for their entire systems, stated in percentages as shown by their reports on file with the Corporation Commission, was as follows:

Southern Railway Company	50.48
Atlantic Coast Line Railroad Company	19.75
Seaboard Air Line Railway Company	250.01

A satisfactory estimate of value could not be made based upon the market value of the stocks and bonds of these companies on the first day of May 1919, for the reason that the limited market and the limited number of shares and bonds sold on the market did not furnish, in our judgment, a fair index of the actual value of these properties as a whole, and more particularly did not furnish an index of the actual value of the properties of these companies located within the State of North Carolina for the reason hereinbefore stated; nor was it considered that the actual value of these properties could be fairly determined by their earnings, until there should be a fair return to normal conditions of operating costs, flow of traffic and stabilization of transportation rates.

For the reasons hereinabove set out the valuation finally made or determined by the State Tax Commission of the properties of eacl. of these railway companies within the State of North Carolina as of the first day of May 1919 was not made with the sole and exclusive relation to any one element or indicia of value, but after due and proper consideration of all of them and upon the best knowledge and information obtainable by the Commission.

186 The members of the Commission have for years been actively engaged in the matters of valuation for rate making and taxation purposes in North Carolina and are acquainted with property values of railroads in the State and in assessing the properties of the plaintiffs the Commission gave due consideration to all factors and methods prescribed by the law governing such valuations and the values of said properties as fixed and determined by the Commission are, in the opinion of affiants, fair, just and reasonable matters within their personal knowledge and to their personal information as to property values and particularly railroad property values in North Carolina.

As to the properties of the Southern Railway Company in the State of North Carolina, a valuation of $111,308,325 was made,

which was in fact the proportion of the investment account of the Southern Railway Company which the gross earnings of that company within the State of North Carolina bore to the total gross earnings of the Southern Railway Company for the year —. Upon hearing and review of this valuation, after notice to the Southern Railway Company, it was reduced to $101,960,416, which was in fact the amount which the average net earnings of the Southern Railway Company within the State of North Carolina for the preceding five years, capitalized upon a basis or theory of six per cent, would have produced.

In general the same method was followed in fixing the valuation of the total properties in the State of the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railroad Company, and the Norfolk and Southern Railroad Company. In each case the basic consideration was the cost of reproduction value, less depreciation, which, in the absence of correct reports of such values by the Railroads as they were required by law to furnish and which were duly called for by the Commission, was arrived at as accurately as possible by a consideration of the investment account. In each case a tentative cost of reproduction value was found in this way which, except in the case of the Norfolk and Southern, was in excess of the assessment as finally arrived at. In the case of the Norfolk and Southern this investment account, or cost of reproduction, value was the same as the final assessment and that railroad made no
187 application to the Commission for rehearing on that assessment and took no exception thereto. In the case of the other railroads, a consideration of capitalization of net income and of the other factors which the Tax Commission was authorized by law to consider led to the reduction of this investment account, or cost of reproduction, value to the valuation fixed as the final assessment.

After the assessments of the properties of the plaintiffs had been arrived at by the Tax Commission pursuant to the Revaluation Act (Public Laws of 1919, Chapter 84) the Commission, as required by law, made report of its action and valuation to the General Assembly of North Carolina and thereupon, in the special session of 1920 the General Assembly, by Chapter 1, Public Laws, Extra Session 1920, specifically approved said valuations as correct and adopted them as and declared them to be the basis for taxation for the years 1920-1923 inclusive, except as such valuations should be thereafter changed according to law. And the affiants are informed and believe and so aver that the said valuations, so made by the Commission and reported to the General Assembly and approved and adopted by it, have remained and still are the basis for taxation of the said railroads in North Carolina except in so far as they have been modified or changed by the Commissioner of Revenue upon application made to him by the said railroads for review as provided by law.

As to the tentative values of the engineers of the Interstate Commerce Commission, referred to by the plaintiffs in these suits as being proper indices of the correct valuation of their total properties in North Carolina, the said tentative values were arrived at upon the basis of an inventory of the railroads' properties as of the date of

June 30, 1914. The affiants state of their own knowledge that the said prices prevailing in 1914 as to material, labor, and all costs of railroad construction, were abnormally low, that since that time such prices have greatly increased, and that in 1919 and in 1920
188 the said prices of labor, materials, and all things going into the Construction of railroads were twice, if not much more than twice, as high as those of 1914 upon which the said tentative figures of the Interstate Commerce Commission were based. In the opinion of the affiants the said tentative figures in no way furnish a proper index or test of the value of the properties of railroads in North Carolina in 1919 and 1920.

It was the purpose of the State Tax Commission in valuing the property of transportation companies and other companies exercising the right of eminent domain, and in the supervision of the valuation of all other property by local assessing officers, to carry out and to have carried out what the State Tax Commission understood to be the general purpose of chapter 84 of the Public Laws of 1919, that all property of every class should be fairly and equally valued at its actual market value, and in evidence that no injustice was done to the Southern Railway Company, the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railroad Company there is attached hereto a copy of the report of the State Tax Commission to the Special Session of the General Assembly of 1920, showing, by comparison, the valuation of 1920 compared with the former valuation of each of the several different classes of properties within the State of North Carolina and showing that the increase in valuation of all railroad property within the State of North Carolina was 99 per cent; of real property 296 per cent; and of all property of all classes within the State 194 per cent.

W. T. LEE.
A. J. MAXWELL.
GEO. P. PELL.

Sworn to and subscribed before me this 21 day of January, 1922.

W. H. PITTMAN,
Notary Public.

My commission expires July 29, 1922.

189 Copy.

Motion to Amend and Order Denying Same.

Filed Jan. 24, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

Motion to Amend.

Comes now the complainant and moves the Court for leave to amend its bill in accordance with the amendment hereto attached a copy of which has been served upon counsel for the defendants.

Dated January 24th, 1922.

THOMAS W. DAVIS,
P. A. WILLCOX,
Solicitor for Complainant.

Order Denying Motion to Amend.

The foregoing motion of complainant to amend its bills in this cause came on by consent of all parties to be heard by Circuit Judge Waddill and District Judges James E. Boyd and Henry G. Connor, the Court convened under Section 266 of the Judicial Code of the United States for the hearing of complainant's application for an interlocutory injunction, and the Court, having duly considered the said motion and being of the opinion that said amendment should not be allowed.

It is ordered and decreed that complainant's motion to amend be and it is denied.

EDMUND WADDILL, JR.,
Circuit Judge.
JAMES E. BOYD,
District Judge.
H. G. CONNOR,
District Judge.

190 *Amendment to Bill of Complaint.*

Filed Jan. 24, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. —.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina et al.

Amendment to Bill of Complaint.

Filed Jan. 24, 1922.

The Atlantic Coast Line Railroad Company by leave of court first had and obtained amends its bill of complaint filed herein by adding the following sections:

32½. Complaint alleges upon information and belief that in the year 1919 real estate in the thirty (30) counties in North Carolina in which complainant operates its line of railroad was assessed at $164,960,110, whereas the true value of such real estate as shown by the assessment of 1920 under the Revaluation Act was $707,216,601, showing a ratio of assessed to true value of 23.33 per cent.; that the property of complainant was assessed in 1919 at $34,645,345, and under the Revaluation Act in 1920 at $50,867,800, showing a ratio of 68.10 per cent; that this discrimination which existed in 1919, and for many years prior thereto, and which still exists, resulted from a systematic and intentional undervaluation of real property with the design to discriminate against complainant and to cast upon complainant an undue share of the burden of
191 taxation and for the purpose of relieving real property of its just proportion of taxation.

That by the Revaluation Act of 1920, and the re-assessment made thereunder, an effort was made to assess all property in the State at its true value, and as a result of such re-assessment, the real property in the counties in which complainant operates its line of railroad was increased from $164,960,110 to $707,216,601, and under such re-assessment complainant's property was increased from $34,645,345 to $50,867,800.

That the legislature of North Carolina by the enactment of Section 28 (*a*) of the Machinery Act of 1921, quoted herein, authorized the County Boards of Commissioners and County Boards of Appraisers and Review to determine if the valuation of real estate in the counties as a whole, as made under the Revaluation Act, was in excess of the

fair value of such property, and authorized a horizontal reduction to the extent the said Boards should find the assessed value to exceed the fair value, and acting under said section of the Machinery Act of 1921 the said Boards made horizontal reductions in the value of real estate as heretofore set forth in this section of the bill of complaint in the counties through which the complainant operates its line of railroad.

That the result of said act of the legislature as carried out by the said Boards has been to intentionally and systematically discriminate against complainant in that by the reductions made in real property the ratio of assessed to true value has been reduced until, as complainant is informed and believes and alleges, the average ratio of assessed value to true value of real estate in the counties through which complainant operates its line of railroad is 65.61 per cent., and throughout the state is 66.58 per cent, whereas the property of complainant in said counties is assessed at more than 100 per cent of its true value within the meaning of the tax laws of the State of North Carolina.

192

That the undervaluation of real property in North Carolina, other than the property of railroads, prior to and since the enactment of the Revaluation Act and Section 28 (*a*) of the Machinery Act of 1921, has been systematic and intentional with the design to discriminate against complainant and other railroads and casts upon them an undue share of the burdens of taxation for the purpose of relieving such other property of its just proportion of taxation, and by this systematic and intentional undervaluation of real and personal property the property of complainant has been valued higher than that of individuals and other corporations, and complainant avers that such discrimination is in contravention of Article 5, Section 3, of the Constitution of North Carolina and of the Fourteenth Amendment to the Constitution of the United States.

193 37½. Complainant shows that Schedule D of the Revenue Act of 1921, known as the Income Tax, is unconstitutional and void for the following reasons:

(*a*) For that it is not a tax on income, but is in truth and in fact a tax upon operating income derived by railroad companies from interstate and intrastate commerce, and for the reason that from the operating revenue arrived at under the said law there are not allowed many of the deductions required by the Standard Classification of Accounts of the Interstate Commerce Commission, which Standard Classification of Accounts was promulgated by the said Interstate Commerce Commission under the provisions of the Interstate Commerce Act passed by Congress, and which are so regulated as to ascertain what is the net income of railroads engaged in interstate commerce. Complainant says that among other items which are directed to be deducted by railroads in interstate commerce from operating income, in order to arrive at net income, are the following:

Rent from leased roads,
Joint facility rents,

Miscellaneous rents,
Separately operated properties—loss,
Interest on unfunded debt,
Income transferred to other companies,
Miscellaneous income charges, and
Interest on funded debt.

and avers that in order to ascertain the net income of railroad companies engaged in business in interstate commerce, as complainant is, according to said Standard Classification of Accounts of
194 the Interstate Commerce Commission, promulgated as aforesaid, it is necessary to deduct the above items.

(*b*) The method or arriving at net income stated in the foregoing paragraph is not net income as the same is defined and arrived at under the Standard Classification of Accounts of the Interstate Commerce Commission, in that the Standard Classification of Accounts directs that there shall be deducted from the net operating income not only the deductions provided for in said law of North Carolina, but in addition thereto the following:

Rent from leased roads,
Joint facility rents,
Miscellaneous rents,
Separately operated properties, loss,
Interest on unfunded debt,
Income transferred to other companies,
Miscellaneous income charges, and
Interest on funded debt.

The result is that the machinery provided for by the said statute for the ascertainment of net income does not in truth and in fact produce net income, which under Section 101 it is declared to be the purpose of the said Act to tax. Furthermore, the method outlined in said law for arriving at net income produces a figure which is not in truth net income, but which contains in part gross income, and insofar as it does include gross income, which gross is derived from interstate commerce, said tax is a direct burden upon interstate commerce and is void under the Commerce Clause of the Constitution of the United States.

195 (*c*) Complainant further says that the said statute is unconstitutional and void for that it permits corporations, other than the corporations named in Section 202, to deduct:

"1. All the ordinary and necessary expenses paid during the income year in carrying on any trade or business, including:

"(*a*) As to individuals, wages of employees for services actually rendered in producing such income.

"(*b*) As to partnerships, wages of employees and a reasonable allowance for copartners or members of a firm, for services actually

rendered in producing such income, the amount of such salary allowance to be included in the personal return of the copartner receiving same.

"(c) As to corporations, wages of employees and salaries of officers, if reasonable in amount, for services actually rendered in producing such income.

"2. Rentals or other payments required to be made as a condition of the continued used or possession for the purposes of the trade of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

"3. All interest paid during the income year on indebtedness except interest on obligations contracted for the purchase of nontaxable securities. Dividends on preferred stock shall not be deducted as interest.

"4. Taxes for the income year, except taxes on income and war profits, and excess profits taxes, inheritance taxes, and taxes assessed for local benefit of a kind tending to increase the value of the property assessed.

"5. Dividends from stock in any corporation the net income of which shall have been assessed and the tax on such income paid by the corporation under the provisions of this act: Provided, that when only part of the income of any corporation shall have been assessed under this act only a corresponding part of the dividends received therefrom shall be deducted.

196 "6. Losses sustained during the income year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit.

"7. Debts ascertained to be worthless and charged off within the income year, if the amount has previously been included in gross income in a return under this act.

"8. A reasonable allowance for the depreciation and obsolescence of property used in the trade or business; and, in the case of mines, oil, and gas wells, other natural deposits, and timber, a reasonable allowance for depletion: Provided, that in computing the deductions allowed under this paragraph, the basis shall be the cost (including in the case of mines, oil, and gas wells, and other natural deposits, the cost of development, not otherwise deducted), and in the case of property acquired prior to January 1, 1921, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date. The reasonable allowances under this paragraph shall be made under rules and regulations to be prescribed by the Tax Commission. In the case of leases the deductions allowed may be equitably apportioned between the lessor and the lessee.

"9. In the case of taxpayers who keep regular books of account, upon an accrual basis and in accordance with standard accounting practice, reserves for bad debts and for contingent liabilities, under such rules and restrictions as the Tax Commission may impose. If the Tax Commission shall at any time deem the reserve excessive in amount it may restore such excess to income, either in a subsequent year or as a part of the income of the income year and assess it accordingly.

"10. Contributions or gifts made within the taxable year to corporations or associations operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, to an amount not in excess of fifteen per centum of the tax payer's net income as computed without the benefit of this subdivision.

197 "11. Resident individuals having an established business in another State, or investment in property in another State, may deduct the net income from such business or investment, if such business or investment is in a State that levies a tax upon such net income. The deductions authorized in this subsection shall in no case extend to any part of income of resident individuals from personal services, or mortgages, stocks, bonds, securities and deposits

"12. In the case of a nonresident individual, the deductions allowed in this section shall be allowed only if, and to the extent that, they are connected with income arising from sources within the State; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the State shall be determined under rules and regulations prescribed by the State Tax Commission."

Thus it is a discrimination in favor of corporations and individuals against railroad companies in making deductions in order to ascertain net income, in violation of the Constitution of North Carolina and the Constitution of the United States.

(*d*) Complainant further says that the statute is violative of Article 5, Section 3, of the Constitution of North Carolina, for that it does not levy upon railroads and other public service corporations named in said Section 202, a tax on net income, but levies a tax upon operating revenue derived from interstate and intrastate commerce and does not permit the deductions necessary and incidental to the business of complainant and expended by it from said income in order to determine net income, and is in violation of the Com-
198 merce Clause of the Constitution of the United States in that it permits a tax as an income tax to be placed on gross income derived from interstate commerce, thereby burdening interstate commerce.

(e) That said so-called Income Tax Law violates the Transportation Act of Congress and the Interstate Commerce Act in that it seeks to prescribe a method of accounting by this interstate carrier, when said acts of Congress have delegated the power to prescribe said accounting to the Interstate Commerce Commission, and the said Commission has prescribed and directed that this complainant and other interstate carriers keep their accounts in accordance with the methods so prescribed by it.

THOS. W. DAVIS,
P. A. WILLCOX,
Solicitors for Complainant.

STATE OF NORTH CAROLINA,
County of Guilford:

Charles J. Joseph, being duly sworn deposes and says:

That complainant, Atlantic Coast Line Railroad Company, is a corporation, and that he is one of its officers, to-wit: Tax Agent; that he has read the foregoing amendment to the bill of complaint, and knows the contents thereof, that the same is true of his own knowledge, except as to those matters therein set forth on information and belief, and as to those matters he believes it to be true.

CHAS. J. JOSEPH. [L. S.]

Sworn to and subscribed before me, this 24 day of January, 1922.

R. L. BLAYLOCK,
Clerk,
By H. W. CAUSEY,
D. C.

199 *Additional Affidavit of Charles F. Joseph.*

Filed Jan. 28, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al., Defendants.

Additional Affidavit of Charles J. Joseph.

Charles J. Joseph, being first duly sworn, deposes and says:

1. That he is Tax Agent of the Atlantic Coast Line Railroad Company, and has heretofore filed an affidavit in this cause.

2. That he has read the affidavit filed herein by Hon. W. T. Lee, Hon. A. J. Maxwell and Hon. George P. Pell, former members of the North Carolina State Tax Commission, and, among other
200 things in said affidavit, affiants state that excess net earnings per mile within the State of North Carolina of the Atlantic Coast Line Railroad Company, complainant herein, in excess of the net earnings per mile, for the year 1918, for its entire system, was 19.75 per cent.

3. Affiant admits that the percentage for the said year was 19.75 but for the year 1920 it was only 4.33 per cent., showing a large decrease from 1918 and 1919.

4. Affiant further says, in reference to said affidavit, in which the former State Tax Commissioners state as follows:

"Upon hearing and review of this valuation, after notice to the Southern Railway Company, it was reduced to $101,960,416, which was in fact the amount from the average net earnings of the Southern Railway Company within the State of North Carolina for the preceding five years, capitalized upon a basis of theory of six per cent. would have produced.

"In general the same method was followed in fixing the valuation of the total properties in the State of the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railroad Company, and the Norfolk and Southern Railroad Company."

that if the above basis was applied, which affiant denies, and which by the facts and figures set forth in the affidavit is shown is not a fact, to the Atlantic Coast Line Railroad Company for the five years from 1915 to 1919, inclusive, its average net operating revenue, less taxes, in the State of North Carolina, being $2,711,847.58,
201 capitalized at six per cent., would show a total valuation of $45,197,459.00. If, however, said average operating revenue, less taxes, of the entire system, of said railroad, for the said five years, inclusive, which was $10,206,453.16, was capitalized at six per cent., the result would be $170,107,252.00, which, distributed to North Carolina on average gross earning basis, amounting to 26.712 per cent., would make a valuation of $45,439,049, and, if allocated to North Carolina, as required by the statute, on operated mileage basis, this amounting to 21.834 per cent., would produce a valuation of $37,141,217.00

5. Affiant further says, in reference to that portion of said affidavit in which the said former State Tax Commissioners state that the lines of the Atlantic Coast Line Railroad Company have a much greater value than average based upon mileage for the entire system in that they have a larger proportion of double track main line mileage in North Carolina than for their entire system, and that both its gross and net earnings in North Carolina are much greater than the average gross and net earnings per mile for their entire system. that the Atlantic Coast Line Railroad Company has a larger proportion of branch line mileage in North Carolina than

for the entire system, and that the proportion of branch line mileage to the entire system in North Carolina is 39 per cent while the proportion of double track mileage is only 14.2 per cent and that the earnings from said branch mileage are relatively much lower than the earnings upon the double track mileage, and that the value of investment in said branch line mileage is greatly
202 less than the value of the investment in double track mileage, and more than offsets such increased proportion of double track mileage in North Carolina.

6. Affiant further says that the earnings in North Carolina are relatively higher in proportion to the earnings for the entire system on account of the fact that there is a larger proportion of transstate movement through North Carolina which neither begins nor ends in that State, and that, as shown by the affidavit of Mr. H. C. Prince, herein, the charges against these shipments, and against the revenue obtained therein, consists of 54 per cent of all of the freight traffic handled in North Carolina, and that three-fourths of all of the operating revenue allocated to North Carolina is derived from interstate instead of intrastate business, and that in crediting North Carolina the straight mileage pro-rate of revenue on such traffic without any deductions for assembling, terminal or handling charges in connection therewith, and in charging to North Carolina only a ratio of operating expenses applicable to the business of the entire line, results in allocating to North Carolina a net revenue in excess of that which is actually earned within said State.

7. Affiant further says that the Atlantic Coast Line Railroad Company paid to the various counties, cities and towns in the State of North Carolina throughout which it runs, for taxes, for the year 1920, the sum of $353,663.84, of which $307,789.53 was paid to the counties and $45,874.31 to the various cities and towns,
203 and for taxes for the year 1921 it has already paid to the same counties, cities and towns the sum of $446,654.61, of which $393,998.45 was paid to the said counties, and $52,656.16 was paid to the said cities and towns, the same being a total of $92,990.77 which it has paid for taxes for the year 1921 on the valuation of $34,645,345 in excess of the amount which it paid for taxes in the year 1920 on the valuation of $50,867,800, and that affiant will pay on the valuation of $50,867,800, the sum of $627,-067.65 for 1921, which will be an increase of $273,403.81 over and above the taxes for 1920, or an increase for the next three years of $820,211.43.

And further affiant saith not.

CHARLES J. JOSEPH.

Sworn to and subscribed before me this 28th day of January, 1922.

[SEAL.]

R. L. BLAYLOCK,
Clerk,
By H. M. CAUSEY,
D. C.

204 *Opinion of the Court.*

Filed March 21, 1922.

In the District Court of the United States.

In Equity.

SOUTHERN RAILROAD COMPANY, ATLANTIC AND YADKIN RAILWAY Company, Atlantic Coast Line Railroad Company, Seaboard Air-line Railway Company, Norfolk-Southern Railroad Company

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, and Others.

Before Waddill, Circuit Judge, Boyd and Connor, District Judges.

Per Curiam:

Bills were filed in equity by the above named companies, to-wit: The Southern Railroad Company and the Atlantic and Yadkin Railway Company, in the United States District Court for the Western Division of North Carolina and the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk-Southern Railroad Company, in the Eastern District of North Carolina, against the defendants A. D. Watts and A. D. Watts as Commissioner of Revenue, Baxter Durham, Auditor, Benjamin R. Lacy, Treasurer, and James S. Manning, Attorney General of North Carolina, in which, for the causes therein set forth, they and each of them prayed for an interlocutory injunction restraining and enjoining said defendants, in their individual and official capacity from proceeding with the collection and the enforcement of payment against complainants, of certain taxes assessed or about to be assessed against complainants and their property, until the final hearing of said causes for that, among other things alleged in the bills, the statutes of the State of North Carolina under, and pursuant to which, said taxes were assesed and sought to be enforced, were unconstitutional and void. Pursuant to the provisions of Section 266 of the Judicial Code, James E. Boyd, Judge of the Western District, called to his assistance in hearing said motions for interlocutory injunction in said causes, brought in the Western District, Edmund Waddill Jr., Circuit Judge of the Fourth Circuit, and H. G. Connor, Judge of the District Court of the Eastern District of North Carolina, and H. G. Connor, Judge of the East-

ern District, called to his assistance in hearing said motions,
205 brought in the Eastern District, Edmund Waddill, Jr., Circuit Judge of the Fourth Circuit and James E. Boyd, Judge of the District Court of the Western District of North Carolina.

As required by the provisions of the statute, the said district judges in the causes pending in said District made orders in which

they directed the defendants to show cause, at a time and place therein named, why the interlocutory injunctions should not be granted as prayed for.

The motions in said causes were, by consent of complainants and defendants, by their attorneys, heard together, at Greensboro, N. C., on January 4th, 1922, when and where said judges being present said motions were heard upon the bills, answers, affidavits, exhibits and argument of counsel, for all parties in said causes.

The further consideration of the motions was, by consent of the counsel and order of the court, continued to Raleigh, N. C. on March 16, 1922, when and where said judges being present, proceeded to consider said motions upon the pleadings, affidavits, exhibits and briefs filed by counsel.

It appears from the bills and answers that the said motions, and prayer for final relief of complainants, are based upon the following allegations and contentions:

1. That the property of complainants was not assessed in the same manner and by the same method as the property of the individual citizens of the state and that, the manner and methods by which complainants' property is appraised and assessed for taxation operates as an unjust and unlawful discrimination against complainants in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and that, thereby, complainants are deprived of their property without due process of law.

2. That the appraisal and assessment for taxation of the property of complainants are not made in accordance with the provisions of the Constitution and Statutes of the State of North Carolina and that said appraisal and assessment of taxes thereon are invalid.

3. That the appraisal of the value of complainant's property is in excess of its true value, for the purpose of taxation, as provided by the Constitution of North Carolina, and is, therefore, invalid.

206 4. That the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States in the appraisal and assessment of complainants' property are violated, in that, complainants' property, alleged by the State to be assessed at its true value for taxation, the property of other taxpayers in the State, is appraised and assessed for taxation at less than its true value.

5. That the Franchise or Privilege Tax imposed upon complainants is invalid for that:

1. The ad valorem assessment is in excess of its true value for taxation and that the Franchise or Privilege Tax, based thereon, in accordance with the Statutes of the State, violates the Constitution of the United States and the State of North Carolina.

2. The Franchise or Privilege Tax is in truth and fact an ad valorem tax and invalid, because not imposed upon the property of other citizens of the State.

3. That the Statute of North Carolina under, and pursuant to which the Franchise or Privilege Tax is imposed and sought to be enforced imposes a tax upon the privilege of doing business by complainants, both interstate and intrastate and is, therefore, a burden upon interstate commerce and thereby violates the Commerce Clause of the Constitution of the United States.

4. That, if the Franchise, or Privilege Tax, imposed upon complainants be valid, the method of ascertaining the value of complainants' property as a basis for fixing the amount of said Franchise or Privilege Tax includes property of complainants used, as well in interstate as intrastate business and is, therefore, a burden upon interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

The Court, after consideration of the bills, exhibits, affidavits and argument of counsel, is of the opinion that, for the purpose of this motion only, complainants have neither in their pleadings,
207 nor upon the proofs adduced, made such a case as entitles them to have an interlocutory injunction in said causes as prayed for, and the motions for such interlocutory injunctions in respect to the ad valorem and the Franchise and Privilege Tax should not be granted and said motions and each of them are denied.

The Court is of the opinion that the contentions sought to be made by complainants in regard to the imposition and enforcement of the Income Tax against complainants, as provided by the Constitution of North Carolina, Article 5, Section 3, as amended, and the statutes enacted by the Legislature pursuant thereto and for the enforcement thereof are not presented upon the bills and proofs herein.

The Court, therefore, does not pass upon, or express any opinion in respect to the validity of the Income Tax, or the Statutes enacted for its enforcement. Complainants may, in respect to such income tax, proceed without prejudice in such manner as they may be advised.

Let this opinion and a copy thereof, be filed and an order drawn and signed to be filed in the record in each of said causes in accordance therewith.

The further proceedings in said causes, in the Courts of the District, in which they are pending, will be had as provided by the Judicial Code and the course and practice of said courts. The costs of the motion will abide the final decree in said causes.

At Raleigh, North Carolina.

This the 18th day of March, 1922.

(S.) EDMUND WADDILL, JR.,
United States Circuit Judge, Fourth Judicial Circuit.

(S.) JAS. E. BOYD,
United States District Judge, Western District of North Carolina.

(S.) H. G. CONNOR,
United States District Judge, Eastern District of North Carolina.

135

208 *Order Denying Interlocutory Injunction.*

Filed March 18, 1922.

In the United States District Court for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS, Commissioner of Revenue, and Others, Defendants.

This cause came on this 18th of March, 1922, before the United States District Court for the Eastern District of North Carolina held by the undersigned three United States judges sitting pursuant to the provision of Section 266 of the Judicial Code to be heard upon a motion for an interlocutory injunction to enjoin and restrain the State of North Carolina from collecting certain taxes enumerated in the complainant's bill which motion was heard and considered upon the pleadings, and affidavits filed respectively by the complainant and the defendants and was argued by counsel, whereupon the court composed of the three judges sitting as aforesaid having filed an opinion denying the right of the complainants to have an interlocutory injunction, it is for reasons stated in writing, in said opinion filed in the cause, and pursuant thereto, adjudged, ordered and decreed That said injunction so prayed for, be and the same is hereby refused and denied.

And it is further ordered that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order, to the end that complainant may take such action in the premises as it is advised to.

(S.) EDMUND WADDILL,
United States Circuit Judge, Fourth Judicial Circuit.

(S.) JAMES E. BOYD,
United States District Judge, Western District of North Carolina.

(S.) H. G. CONNOR,
United States District Judge, Eastern District of North Carolina.

209 *Notice of Application for Appeal & Stay.*

Filed March 30, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. —.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

To the defendants in the above-entitled action and Honorable James S. Manning, Attorney General of North Carolina, and Frank Nash, Assistant Attorney General, Solicitors for defendants:

You will please take notice that on Thursday, March 30th, 1922, at 10:00 o'clock A. M., or as soon thereafter as counsel may be heard, the above named complainant will apply to His Honor, Henry G. Connor, District Judge, at office in Wilson, N. C., for an order allowing the complainant to appeal to the Supreme Court of the United States and granting a stay of proceedings until the appeal shall have been heard, passed upon and disposed of by the Supreme Court of the United States.

ATLANTIC COAST LINE RAILROAD COMPANY,
By T. W. DAVIS,
Solicitor.

Filed at Wilson, N. C., March 30, 1922.

H. G. CONNOR,
Dist. Judge.

210 *Assignment of Errors.*

Filed March 30, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue of North Carolina, et al., Defendants.

Now comes the complainant, in the above entitled cause, and in connection with its petition for appeal from the order entered March 18, 1922 (by the court convened under Section 266 of the Judicial Code of the United States), denying the motion for interlocutory injunction, files the following assignments of error:

The Court erred:

(1) In decreeing that the interlocutory injunction be denied.

(2) In holding that for the purpose of the motion for an interlocutory injunction only, complainant neither in its pleadings, nor upon the proof adduced, is entitled to have the interlocutory injunction applied for.

(3) In failing to hold that the assessment of complainant's property for taxation is in excess of its "true value" in money for the purpose of taxation as required by the Constitution of North Carolina and is therefore invalid.

(4) In failing to hold that the appraisal of complainant's property for taxation is not made in accordance with the provisions of the Constitution and Statutes of North Carolina, and that said appraisal and assessment of taxes are invalid and illegal.

211 (5) In failing to hold that the property of complainant was illegally assessed, in that the plan of valuation followed to arrive at the assessment complained of imported into the State of North Carolina values which are elsewhere, and that such plan so followed violates the Commerce Clause of the Constitution of the United States.

(6) In failing to hold that the manner and method by which complainant's property was assessed is illegal and operates as an unjust and unlawful discrimination against complainant in violation of the provisions of the Fourteenth Amendment to the Con-

stitution of the United States, and that thereby complainant is deprived of its property without due process of law and denied the equal protection of the law.

(7) In failing to hold that the action of the Commissioner of Revenue, in declining to make a reduction in the value of complainant's property commensurate with the horizontal reductions made by the taxing authorities under the North Carolina law permitting such reductions on other property generally, was unjust discrimination, contrary to the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States.

(8) In failing to hold that the Uniformity Clause of the North Carolina Constitution and the Fourteenth Amendment to the Constitution of the United States are violated, in that complainant's property is alleged by the State to be assessed at its true value for taxation, while the property of other taxpayers generally in the State is appraised and assessed for taxation at less than its true
212 value in money and that this appraisal and assessment of the property of other citizens and taxpayers of the State has been long continued and is arrived at under a scheme of taxation which shows intent to place an undue burden of taxation upon complainant and its property.

(9) In failing to hold that the scheme of taxation of the State of North Carolina and the assessment of the properties of the various classes of taxpayers is by a settled purpose and intent so designed and carried out that, while the property of complainant is assessed at its true value in money, or more than its true value in money, the large proportion of the property in the State is assessed at less than its true value in money, thereby casting an undue and excessive burden upon complainant, in violation of the Uniformity Clause of the Constitution of the State of North Carolina and in violation of the Fourteenth Amendment to the Constitution of the United States.

(10) In failing to hold that the ad valorem assessment being in excess of true value for taxation, the so-called Franchise tax based thereon violates the Constitution of North Carolina and the Constitution of the United States.

(11) In failing to hold that the so-called Franchise or Privilege tax is in truth and in fact an additional ad valorem or property tax upon complainant's property and is illegal and invalid because levied for the support of the State and is not levied equally upon the property of other citizens and taxpayers of the State and the enforcement of such void statute deprives complainant of its property without due process of law contrary to the Constitution of the United States.

213 (12) In failing to hold that the so-called Franchise or Privilege tax is under the statute imposed as a license or privilege tax for the privilege of engaging in inter and intrastate

commerce and is therefore a burden upon interstate commerce in violation of the Commerce Clause of the Constitution of the United States.

(13) In failing to hold that if the Franchise or Privilege tax be imposed for the privilege of engaging in intrastate commerce, it is measured in part by the value of the privilege of engaging in interstate commerce in that it is based upon the entire value including values derived from use in interstate commerce, and is, therefore, a burden imposed upon interstate commerce, in violation of the Commerce Clause of the Constitution of the United States.

(14) In failing to hold that if the so-called Franchise or Privilege tax is imposed for the privilege of engaging in intrastate commerce, the tax should have been assessed against complainant upon one half of the ad valorem value, as provided in Section 82 (3½) of the Revenue Act of North Carolina of 1921, and that the tax assessed against complainant upon the full value of its property is, therefore, contrary to the law and void.

(15) In failing to hold that the payment of the so-called Franchise or Privilege tax is exacted as a condition precedent to the right of complainant to do "any business" in the State, whether interstate or intrastate, and, therefore, unconstitutional and void.

(16) In failing to hold that the assessment made is void,
214 in that it includes in the value used as a basis for arrival at the Franchise or Privilege tax the value of property not used in the business for which the privilege is exacted, and such law and the enforcement thereof, in the manner set forth, violates the Fourteenth Amendment to the Constitution of the United States.

(17) In failing to hold that the tax system of the State of North Carolina, which includes an ad valorem tax on the full value of its property in the State, including as a part thereof value it has due to its use in interstate commerce, plus a Franchise or Privilege tax upon the full value of the said property for ad valorem purposes, plus an income tax of three per cent on its net operating income, does, in practical operation, result in a burden upon interstate commerce, and violates the Commerce Clause of the Constitution of the United States.

THOS. W. DAVIS,
Solicitor for Complainant.

Filed at Wilson, N. C., March 30, 1922. H. G. Connor, Dist. Judge.

215 *Order Fixing Time for Hearing Application for Appeal and Stay.*

Filed March 31, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. —.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

Order.

The plaintiff in the above entitled cause having presented its application for appeal to the Supreme Court from an order of Circuit Judge Waddill, and District Judges Boyd and Connor, dated March 18, 1922, and its application for a stay pending the decision of the Supreme Court upon appeal and counsel for defendants having requested of the Court a continuance.

It is now ordered that this application be continued to be heard before me at Wilson, North Carolina, at Chambers, at 11 o'clock A. M. April 8th, 1922.

That copies of this order be mailed to the Attorney General and his Associate counsel.

This the 30th day of March, 1922.
At Wilson, North Carolina.

H. G. CONNOR,
United States District Judge.

216 *Order Denying Stay.*

Filed April 18, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et al., Defendants.

This matter coming on to be heard at Raleigh, North Carolina, on April 15, 1922, on application of complainant for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18, 1922, until the appeal heretofore taken shall have been heard, passed upon and disposed of by the Supreme Court of the United States, and all parties being represented by counsel now before the Court:

The Court, being of the opinion that the application to continue in effect the thirty day stay granted March 18, 1922, until a review and decision can be had by the Supreme Court of the United States on the appeal heretofore taken from the order of this Court, denying the interlocutory injunction, should be presented to the Supreme Court of the United States, denies the application for continuance of said stay until the appeal is decided by the Supreme Court of the United States.

And it appearing to the Court that the hearing of this application has been delayed through no fault of complainant's, and the Court being of the opinion that the status quo should be continued until the application for restraint pending the appeal can be made to and decided by the Supreme Court of the United States, orders that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order.

EDMUND WADDILL, JR.,
U. S. Circuit Judge, Fourth Judicial Circuit.
JAMES E. BOYD,
U. S. District Judge, Western District of North Carolina.
H. G. CONNOR,
U. S. District Judge, Eastern District of North Carolina.

217 *Stipulation of Counsel as to the Record.*

Filed April 15, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et al., Defendants.

It is stipulated and agreed by and between the parties to the above entitled cause:

That the Clerk, in making up the transcript of record on this appeal from the Order denying complainant's motion for an interlocutory injunction, shall include all pleadings, orders, motions, stipulations, affidavits, and exhibits, constituting the entire record before the Court, except there may be omitted from the record the following:

(1) The Clerk shall not include as a part of the transcript the individual affidavits of the Registers of Deeds of the 100 Counties in the State of North Carolina, together with the tabulated lists of conveyances recorded from January 1, 1921, to June 30, 1921, and setting forth opposite each conveyance the consideration in the deed and the assessed value for taxation of the property conveyed.

(2) Return of the service of the notice of the hearing on complainant's application for an interlocutory injunction.

(3) Return of the service of the writ upon the various defendants.

218 The Clerk shall include as a part of the transcript four of the said affidavits, to-wit, that of Philip L. Kainer, R. G. Parker and C. A. Vogler, of Forsyth County, and J. P. Bunn, of Nash County, North Carolina, together with the tabulated statement of deeds recorded and the deed value of each parcel conveyed and the assessed value for taxation of each parcel so conveyed, these being typical of all as to the form and character of information contained therein. It is unnecessary to set forth the individual affidavits of deed and tax value taken from the records of each separate County in the State, because the information shown on said separate affidavits, containing the deed value of 7,431 separate conveyances and a comparison of the tax assessment of each said parcel, is summarized in the affidavit of C. J. O'Brien which is to be included in the transcript.

It is further stipulated that the Clerk may use in preparing the record on appeal printed copies of all such pleadings, documents, affidavits, etc., as may be furnished by the parties hereto.

THOS. W. DAVIS,
Solicitor for Complainant.
JAMES S. MANNING,
Solicitor for Defendants,
Attorney General of N. C.

219 *Memorandum of Original Papers Certified Separately.*

Petition for Appeal filed March 30, 1922.
Appeal allowed April 15, 1922.
Appeal Bond dated April 15, 1922; penalty, $1,000.00; Obligors: Atlantic Coast Line Railroad Company and Fidelity & Deposit Company of Baltimore: Conditioned for damages and costs.
Citation dated April 15, 1922; service accepted by James S. Manning, Attorney General of North Carolina, for A. D. Watts, Commissioner of Revenue, and other defendants, April 15, 1922.

220 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et als.

Order to Transmit Record.

And thereupon it is ordered by the Court here that a transcript of the record and proceedings in said suit be transmitted to the United States Supreme Court at Washington, D. C., and the same is transmitted accordingly.

S. A. ASHE,
Clerk United States District Court.

221 *Clerk's Certificate.*

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et als.

Clerk's Certificate.

I, S. A. Ashe, Clerk, United States District Court, for the Eastern District of North Carolina, do hereby certify that the foregoing pages present a full, true and correct copy of the proceedings had and orders entered in that certain suit in equity pending in said Court, wherein Atlantic Coast Line Railroad Company is complainant and A. D. Watts, Commissioner of Revenue of North Carolina, and others, are defendants.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said District Court at the Courthouse in Raleigh, State of North Carolina, this 5 day of May, 1922.

[Seal of the United States District Court, Eastern Dist. of N. C., at Raleigh.]

S. A. ASHE,
Clerk United States District Court.

222 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et al., Defendants.

To the Honorable Henry G. Connor District Judge of the United States for the Eastern District of North Carolina:

The Atlantic Coast Line Railroad Company, the above named Complainant, feeling aggrieved by the Order of the Court, consist-

ing of Circuit Judge Waddill and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code of the United States, entered in the above entitled cause on the 18th day of March, 1922, refusing and denying the interlocutory injunction applied for in this cause to restrain the Defendants, until the cause could be heard on its merits, does, as provided in Section 266 of the Judicial Code of the United States, hereby appeal to the Supreme Court of the United States from the order refusing and denying the interlocutory injunction applied for upon the grounds set forth in the assignments of error filed herewith, and complainant prays that its appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings, and documents upon which said appeal is based, duly authenticated, be sent to the Supreme Court of the United States, under the rules of such Court in such cases made and provided.

And Complainant further prays that the Court enter
223 & 224 an Order continuing in effect the thirty day stay granted by the Court in the Order entered March 18, 1922, until the appeal herein prayed for shall have been heard, passed upon, and disposed of by the Supreme Court of the United States.

ATLANTIC COAST LINE RAILROAD COMPANY,
By THOS. W. DAVIS,
Solicitor.

224½ [Endorsed:] Petition for appeal. I certify that the within is entered and filed this day, Apr. 15, 1922. S. A. Ashe, Clerk.

225 [Endorsed:] #437. Equity. Atlantic Coast Line Railroad vs. A. D. Watts et al. Petition for Appeal. I certify that the within is entered and filed this day, Mar. 30, 1922. S. A. Ashe, clerk.

226 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue et al., Defendants.

This matter coming on to be heard on the application of complainant for an appeal to the Supreme Court of the United States, under Section 266 of the Judicial Code of the United States, from the decree entered in this cause on the 18th day of March, 1922,

refusing and denying the interlocutory injunction applied for; and upon the assignments of error filed in said cause and presented to the Court with the said application for appeal and for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18th, 1922, until the appeal prayed for shall have been heard, passed upon, and disposed of by the Supreme Court of the United States.

And all parties being represented by counsel now before the Court on due notice.

It is ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the order and decree filed and entered herein on the 18th day of March, 1922, refusing and denying the interlocutory injunction prayed for, upon the giving of bond in the sum of $1,000.00.

It is further ordered that citation of appeal issue and be served upon the defendants or their attorneys of record, and that the Clerk of this Court prepare and forward to the Supreme Court
227 & 228 of the United States a transcript of the record of the proceedings, pleadings, affidavits, etc., upon which the judgment herein was rendered, duly authenticated.

This 15th day of April, 1922.

H. G. CONNOR,
U. S. District Judge,
Eastern District of North Carolina.

229 [Endorsed:] #437. A. C. L. R. R. Co. vs. A. D. Watts. Order granting appeal. I certify that the within is entered and filed this day, Apr. 15, 1922. S. A. Ashe, Clerk.

230 *Appeal Bond.*

Filed 18 Day of April, 1922. S. A. Ashe, Clerk.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 437.

ATLANTIC COAST LINE RAILROAD COMPANY, Complainant,

vs.

A. D WATTS and A. D. WATTS as Commissioner of Revenue et al., Defendants.

Know all men by these presents: That we, Atlantic Coast Line Railroad Company, a corporation organized and exsting under the laws of the State of Virginia, as principal, and Fidelity & Deposit Company of Baltimore, as surety, are held and firmly bound unto the above named A. D. Watts and the other defendants in the sum

of one thousand dollars, to be paid to the said A. D. Watts and other defendants, their successors and assigns, to which payment, well and truly to be made, we bind ourselves and our successors jointly and severally by these presents.

Sealed with our seals this 15th day of April, 1922.

Whereas, in a suit pending in the District Court of the United States for the Eastern District of North Carolina between Atlantic Coast Line Railroad Company, complainant, and A. D. Watts, et al., defendants, a decree was rendered by the Court consisting of Circuit Judge Waddill and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code, denying complainant an interlocutory injunction as prayed for, and the said Atlantic Coast Line Railroad Company having prayed and been allowed an appeal under Section 266 of the Judicial Code of the United States, direct to the Supreme Court of the United States, and filed a copy thereof in the Clerk's Office of the said Court, and citation having issued directed to the said A. D. Watts, et al., citing and admon-
231 & 232 ishing them to be and appear in the Supreme Court of the United States within the time required by law.

Now, the condition of the above obligation is such, that if the said Atlantic Coast Line Railroad Company shall prosecute its said appeal to effect, and answer all damages and costs if it fails to make its appeal good, then the above obligation shall be void, else to remain in full force and effect.

[Seal of Atlantic Coast Line Railroad Company, Incorporated in Virginia.]

ATLANTIC COAST LINE RAILROAD COMPANY,
By THOS. W. DAVIS,
Solicitor, and
By R. S. CRONBY,
Attorney in Fact.

[Seal of Fidelity & Deposit Company of Maryland, Incorporated 1890.]

FIDELITY & DEPOSIT COMPANY OF BALTIMORE,
By THEODORE S. JAMES,
Attorney in Fact.

Approved this 15th day of April, 1922.

H. G. CONNOR,
United States District Judge.

233 [Endorsed:] #437. Eq. A. C. L. R. R. Co. vs. A. D. Watts et —. Appeal Bond & Order Approving Same. I certify that the within is entered and filed this day Apr. 18, 1922 S. A. Ashe, Clerk.

234 *Citation.*

Filed 15th Day of April, 1922. S. A. Ashe, Clerk.

UNITED STATES OF AMERICA:

The President of the United States to A. D. Watts and A. D. Watts as Commissioner of Revenue et al., Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be holden in the City of Washington, on the 8 day of May, next, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Eastern District of North Carolina, wherein Atlantic Coast Line Railroad Company is complainant, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said complainant in error, as in the said appeal mentioned, should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand in the City of Raleigh, N. C., in the District above named, this 15th day of April, 1922.

H. G. CONNOR,
Judge of the District Court of the United States
for the Eastern District of North Carolina.

Service of within citation accepted for all defendants April 15th, 1922.

A. D. WATTS,
Commissioner of Revenue, and Other Defendants,
By JAMES S. MANNING,
Attorney General of North Carolina.

I certify that the within is entered and filed this day. Apr. 15, 1922.

S. A. ASHE,
Clerk.

235 [Endorsed:] #437. Eq. A. C. L. vs. Watts. Citation. I certify that the within is entered and filed this day. Apr. 18, 1922. S. A. Ashe, clerk.

Endorsed on cover: File No. 28,916. E. North Carolina D. C. U. S. Term No. 961. Atlantic Coast Line Railroad Company, appellant, vs. A. D. Watts and A. D. Watts, as Commissioner of Revenue of the State of North Carolina et al. Filed May 8th, 1922. File No. 28,916.

(28,917)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 962.

NORFOLK SOUTHERN RAILROAD COMPANY, APPELLANT,

vs.

A. D. WATTS AND A. D. WATTS, AS COMMISSIONER OF REVENUE OF THE STATE OF NORTH CAROLINA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

INDEX.

	Original.	Print
Bill of complaint	2	1
Exhibit A—Article V, revenue and taxes	33	19
Exhibits B and C—Statements	34	20
Application for interlocutory injunction	36	23
Order on application for interlocutory injunction	38	24
Notice of hearing of application for interlocutory injunction	39	25
Service of notice of hearing	40	26
Stipulation for service of subpœna	41	27
Subpœna	43	28
Marshal's return on same	44	29
Subpœna	45	29
Marshal's return on same	46	30
Clerk's notation on subpœna to defendants in eastern district	47	30
Clerk's notation on subpœna to defendants in western district	48	31
Order continuing hearing	49	31
Motion to dismiss	50	32

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 25, 1922.

	Original.	Print.
Agreement for hearing at Greensboro	51	33
Stipulation of counsel and interlocutory order	52	34
Answer	54	36
Exhibit A—Comparative statement of taxable values	67	45
Affidavit of F. L. Nicholson	70	51
Charles M. Weeks	72	54
J. C. Nelms, Jr	78	61
C. P. Dugan	83	64
J. C. Nelms, Jr	86	66
J. C. O'Brien	88	67
M. S. Hawkins	92	73
Order for filing affidavit of members of former tax commission	120	90
Affidavit of members of former tax commission of North Carolina	121	91
Opinion *per curiam*	129	96
Order denying interlocutory injunction	134	99
Notice of application for appeal and stay	135	100
Order fixing time for hearing application	136	101
Assignment of errors	137	102
Order denying stay	143	105
Stipulation of counsel as to record	144	106
Additional stipulation as to the record	146	107
Memorandum of original papers certified separately	147	107
Order to transmit record	148	108
Clerk's certificate	149	108
Petition for appeal	150	109
Order allowing appeal	152	110
Bond on appeal	153	111
Citation and service	156	112

1

TRANSCRIPT OF RECORD.

In the District Court of the United States for the Eastern District of North Carolina.

At a District Court of the United States for the Eastern District of North Carolina begun and held at the court house, in the city of Raleigh, on the first Monday of March, being the sixth day of the same month, in the year of our Lord one thousand nine hundred and twenty-two.

Present: The Honorable Henry G. Connor, Judge of the District Court for the Eastern District of North Carolina.

Among others were the following proceedings, to-wit:

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina, et als.

2

Bill of Complaint.

Filed Oct. 17, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK-SOUTHERN RAILROAD COMPANY, Complainant,

vs.

AUGUSTUS D. WATTS, Commissioner of Revenue of North Carolina; Baxter Durham, State Auditor of North Carolina; Benjamin R. Lacy, State Treasurer of North Carolina; J. Bryan Grimes, Secretary of State of North Carolina; James S. Manning, Attorney-General of North Carolina; Frank Nash, Assistant Attorney-General of North Carolina, and Others.

To the honorable the judge of the District Court of the United States for the Eastern District of North Carolina:

3 Norfolk-Southern Railroad Company, a corporation originally created, organized and existing under the laws of the State of Virginia, a citizen and resident of the State of Virginia, brings this its bill against the following named defendants, all of whom are citizens and residents of the State of North Carolina,

and who duly and severally hold and occupy the offices designated as being held by them, the bill being brought against them individually and in their official capacities, to wit:

Augustus D. Watts, Commissioner of Revenue for North Carolina,
Baxter Durham, State Auditor for North Carolina,
Benjamin R. Lacy, State Treasurer for North Carolina,
J. Bryan Grimes, Secretary of State for North Carolina,
James S. Manning, Attorney-General for North Carolina,
Frank Nash, Assistant Attorney General for North Carolina.

The following Sheriffs and Tax Collectors in their official capacities, who are citizens and residents of the Eastern District of North Carolina:

R. E. Flora, Sheriff and Tax Collector of Currituck County,
W. M. Forbes, Sheriff and Tax Collector of Camden County,
Charles Reid, Sheriff and Tax Collector of Pasquotank County,
W. G. Wright, Sheriff and Tax Collector of Perquimans County,
G. W. Goodwin, Sheriff and Tax Collector of Chowan County,
C. M. Lawrence, Sheriff and Tax Collector of Gates County,
4 Jos. E. Reynolds, Sheriff and Tax Collector of Tyrrell County,
J. E. Reid, Sheriff and Tax Collector of Washington County,
Jas. H. Harris, Sheriff and Tax Collector of Beaufort County,
James D. Williams, Sheriff and Tax Collector of Craven County,
W. H. Pickles, Sheriff and Tax Collector of Pamlico County,
J. R. Westbrook, Sheriff and Tax Collector of Jones County,
T. M. Thomas, Jr., Sheriff and Tax Collector of Carteret County,
A. W. Taylor, Sheriff and Tax Collector of Lenoir County,
William D. Grant, Sheriff and Tax Collector of Wayne County,
E. R. Dudley, Sheriff and Tax Collector of Pitt County,
J. E. Herring, Sheriff and Tax Collector of Greene County,
B. E. Howard, Sheriff and Tax Collector of Wilson County,
W. J. Massey, Sheriff and Tax Collector of Johnston County,
J. L. Cornwell, Sheriff and Tax Collector of Nash County,
D. B. Harrison, Sheriff and Tax Collector of Wake County,
J. W. McArtan, Sheriff and Tax Collector of Harnett County,
G. W. Blair, Sheriff and Tax Collector of Chatham County,
5 N. H. McGeachy, Sheriff and Tax Collector of Cumberland County,
L. C. Rosser, Sheriff and Tax Collector of Lee County,
D. A. Blue, Sheriff and Tax Collector of Moore County,
R. L. McDonald, Sheriff and Tax Collector of Richmond County,
G. H. Wood, Tax Collector of the town of Elizabeth City,
T. J. Etheridge, Tax Collector of the town of Edenton,
George Harrison, Tax Collector of the town of Plymouth,
L. L. Chesson, Tax Collector of the town of Roper,
J. R. Meekins, Tax Collector for the town of Washington,
E. S. Smith, Tax Collector for the town of Belhaven,
R. L. Swindell, Tax Collector for the town of Pinetown,
J. P. Whitley, Tax Collector for the town of Pantege,
C. H. Hough, Tax Collector for the town of Columbia,
J. S. Nichols, Tax Collector for the town of Arthur,

J. L. Taylor, Tax Collector for the town of Farmville,
J. O. Duval, Tax Collector for the town of Greenville,
C. E. Swain, Tax Collector for the town of Grimesland,
J. A. Lewis, Tax Collector for the town of Middlesex,
Allison B. Farmer, Tax Collector for the town of Bailey,
6 H. F. Barnes, Tax Collector for the town of Wilson,
W. D. West, Tax Collector for the town of Stantonsburg,
T. B. Eldridge, Tax Collector for the town of Raleigh,
J. R. Boothe, Tax Collector for the town of Fuquay Springs,
Z. E. Broadwell, Tax Collector for the town of Wendell,
E. P. Denton, Tax Collector for the town of Zebulon,
Jos. S. Warrick, Tax Collector for the town of Goldsboro,
W. B. Coleman, Tax Collector for the town of Kinston,
N. L. Lucas, Tax Collector for the town of La Grange,
C. F. Gay, Tax Collector for the town of Fieldsboro,
M. A. Hill, Tax Collector for the town of Beaufort,
M. F. Nelson, Tax Collector for the town of Morehead City,
A. L. Wilson, Tax Collector for the town of Newport,
J. H. Dixon, Tax Collector for the town of Lillington,
Jas. S. McNeill, Tax Collector for the town of Fayetteville,
R. D. Collier, Tax Collector for the town of Linden,
I. H. Beck, Tax Collector for the town of Aberdeen,
W. B. Lambert, Tax Collector for the town of Carthage,
A. D. Spivey, Tax Collector for the town of Ellerbe,
J. H. Harris, Tax Collector for the town of Cove,
W. G. Rouse, Tax Collector for the town of Dover,
7 F. H. Lane, Tax Collector for the town of Newbern,
C. A. Ryman, Tax Collector for the town of Bridgeton,
R. C. Cleese, Tax Collector for the town of Vanceboro,
W. H. Pickles, Tax Collector for the town of Bayboro,
E. F. Luptin, Tax Collector for the town of Stonewall,
L. M. Badham, Tax Collector for the town of Oriental,

And the following Sheriffs and Tax Collectors, in their official capacities, residents and citizens of the Western District of North Carolina:

J. A. Brady, Sheriff and Tax Collector of Randolph County,
G. W. Stuart, Sheriff and Tax Collector of Montgomery County,
J. J. Morton, Sheriff and Tax Collector of Stanly County,
C. L. Spears, Sheriff and Tax Collector of Cabarrus County,
W. O. Cochrane, Sheriff and Tax Collector of Mecklenburg County,
C. H. Rush, Tax Collector for the town of Asheboro,
J. T. Brown, Tax Collector for the town of Seagrove,
G. F. Hunsucker, Tax Collector for the town of Troy,
A. C. Parsons, Tax Collector of the town of Star,
G. B. Maynard, Tax Collector for the town of Mount Gilead,
Clarence Bruton, Tax Collector for the town of Biscoe,
8 A. V. Thomas, Tax Collector for the town of Oakboro,
Joe F. Scarboro, Tax Collector for the town of Norwood,
C. M. Creswell, Tax Collector for the town of Charlotte; and therefore upon complains and says:

(1) Norfolk-Southern Railroad Company is a corporation originally created, organized and exists under and by virtue of the laws of the State of Virginia, and is a citizen and resident of the State of Virginia, authorized by its charter to conduct and carry on the business of a common carrier of freight and passengers by railroad, not only within the State of Virginia, but outside of and beyond its border, and to engage in interstate commerce.

(2) The defendants hereinbefore named are each and every of them citizens and residents of the State of North Carolina, respectively hold the offices as to each hereinbefore designated, respectively reside in the districts of said State hereinbefore designated, and the State Officials have an official residence at the City of Raleigh, in the Eastern District of said State; the other defendants have official residences in their respective counties and towns.

Complainant is advised that no tax collector has been appointed for the towns of Hertford, Winfall, Cander, Creswell, and Chocowinity. As soon as such tax collectors are appointed, complainant will ask that they be made parties hereto.

(3) This is a suit in equity, arising under the constitution and laws of the United States, the benefit and protection of which complainant especially sets up and claims; matters are also involved arising under the constitution and laws of North Carolina,
9 of which matters this Court has jurisdiction by reason of diverse citizenship of the parties, the amount in controversy in this case, exclusive of interest and cost, exceeds the sum and value of Three Thousand Dollars, as will be more specifically hereinafter shown.

(4) The people of the State of North Carolina, in the constitution adopted by them, in their sovereign capacity have set up and established a system of taxation for the support of the State and its various political subdivisions, have limited the powers of the general assembly or legislative department in the manner and extent to which it may impose burdens of taxation upon persons and property within its borders.

So far as material to this controversy, the provisions of the constitution are as set out in Exhibit A hereto and prayed to be taken as a part hereof.

(5) The General Assembly of the State prior to January 1, 1921, adopted a system of quadrennial valuation of lands, and an annual valuation of personal property, for assessing and collecting such taxes as might be legally levied and assessed upon property.

The last quadrennial assessment was made during the year 1920.

The General Assembly, at the biennial session held in 1921, amended the laws relative to the assessment and collection of taxes upon real property.

The manner and method of assessing the value of property, the levying and collecting of taxes upon real and personal property in the State of North Carolina (authorized to be levied and collected

under the constitution of the State) is set out and contained in Chapter 38, Public Laws 1921, being an act entitled, "An Act to Amend Chapter 92 Public Laws 1919 in Relation to the Assessment of Property and the Collection of Taxes," ratified on the eighth day of March, 1921. The whole of said act is referred to and prayed to be taken as a part hereof. The parts of said act deemed to be material to this controversy are sections 14, 26-*a*, 26-*e*, 26-*g*, and 61 to 67-*a*, both inclusive.

(6) Complainant owns a line of railroad extending from the City of Norfolk, in the State of Virginia, to the City of Charlotte, in the State of North Carolina, together with numerous branch lines, leading from said main line, and has under lease for 91 years, 4 months, from the first day of September, 1904, the line of railroad owned by the Atlantic and North Carolina Railroad Company, extending from Goldsboro to Morehead City, in the State of North Carolina, which connects with the line of railroad owned by Complainant at Newbern, North Carolina. One of the conditions of said lease is that complainant shall pay all taxes which may be lawfully and legally levied or assessed against said line of railroad or against said Atlantic and North Carolina Railroad Company, and prior to the first day of March, 1920, had under lease the line of railroad owned by the Carthage and Pinehurst Railroad Company, extending from a connection at Pinehurst with the line of railroad owned by complainant to Carthage, North Carolina, one of the conditions of said lease being that complainant should pay such taxes as might be lawfully and legally assessed against said line of railroad and said company. Complainant has since the expiration of said lease continued to operate said line of railroad upon the same terms and conditions as contained in said lease; since the twenty-seventh day of May, 1920, complainant has had under lease for the term of 99 years, the line of railroad owned by the Durham and South Carolina Railroad Company, extending from a connection with the line of railroad owned by Complainant at Duncan, North Carolina, to Durham, North Carolina, one of the conditions of said lease being that Complainant shall pay such taxes as might be lawfully and legally assessed against the railroad of said Company and against said Company.

(7) All of said lines of railroad constitute what is commonly known as Norfolk-Southern Railroad system, said system consists of 937.926 miles of first main line track and 9.462 miles of second main line track, divided as follows:

	First main line.	Second main line.
Norfolk-Southern, owned	793.407	9.462
Atlantic & North Carolina, leased	95.910	
Carthage & Pinehurst, leased	12.225	
Durham & South Carolina, leased	37.382	
Total	937.926	9.462

Divided between the States of North Carolina and Virginia, as follows:

North Carolina.

	First main line.	Second main line.
Norfolk-Southern, owned	682.128	
Atlantic & North Carolina, leased	95.910	
Carthage & Pinehurst, leased	12.226	
Durham & South Carolina, leased	37.382	
Total	827.647	

Virginia.

	First main line.	Second main line.
Norfolk-Southern, owned	110.279	9.462

Total main line track, first and second..... 947.388 miles

Total main line track in North Carolina..... 87.36%
Total main line in Virginia 12.64%

12 Excluding the Durham and South Carolina, which is assessed separately, there is of the Norfolk-Southern owned lines and the lines leased from Atlantic and North Carolina, and Carthage and Pinehurst, which are listed as one property 87.754 per cent in North Carolina and 12.246 per cent in Virginia.

(8) Complainant, in 1920, duly filed with the State Tax Commission, the body then authorized under the laws of North Carolina to assess and value for taxation the property of railroad companies operating in the State of North Carolina, all information required by the State Tax Commission, to enable it to assess for taxation the property of Complainant, including the property under lease from the Atlantic and North Carolina Railroad Company, and the Carthage and Pinehurst Railroad Company; and the Durham and South Carolina Railroad Company duly filed with the said State Tax Commission all information requested by the State Tax Commission to enable the State Tax Commission to assess for taxation the property of the Durham and South Carolina Railroad Company, now under lease to Complainant. The State Tax Commission undertook to assess for ad valorem taxation all of the property of the Durham and South Carolina Railroad Company, located in North Carolina, all of its tangible and intangible property, including its franchises, and assessed the said property as being of the actual value in money at the sum of $372,300.00.

The State Tax Commission undertook to assess for ad valorem taxation all of the property of Complainant situate in the State of North Carolina, including that held under lease from the Atlantic and North Carolina Railroad Company and the Carthage and Pinehurst Railroad Company, including the tangible and intangible

property and franchises of said Companies, and assessed the
13 said value of all of said property in the State of North Carolina, including the franchises, at the sum of $27,023,462.00, which was largely in excess of the actual value in money.

(9) That by Chapter 40 of the Public Laws of 1920, being an Act entitled, "An Act to Transfer the Power and Duties of the State Tax Commission to the State Department of Revenue," ratified the ninth day of March, 1921, the duties and powers of the State Tax Commission were on and after May 1, 1921, transferred to the State Department of Revenue and the words 'State Tax Commission" wherever used in the revenue laws of the State were to mean, "The Commissioner of Revenue" to be appointed under said Act, who was by said Act authorized to exercise all the powers vested in the State Tax Commission under the Revenue Laws of the State.

Augustus D. Watts was duly appointed and qualified as Commissioner of Revenue and is entitled to exercise the duties and powers of the "State Tax Commission."

(10) Acting under authority contained in Sec. 26 (*g*) of said Chapter 28 of the Public Laws of 1921, Complainant applied to the Commissioner of Revenue (State Tax Commission) for a review of the assessment of the value for taxation of the property of Complainant, including its line of railroad leased from Atlantic and North Carolina Railroad Company, and Carthage and Pinehurst Railroad Company, so that the same might be valued at its actual value in money, as required by the Constitution of the State.

The said Commissioner of Revenue (State Tax Commission) found that the aforesaid property of the Complainant was
14 assessed at too high a value, and reduced the assessed value of said property, including all the tangible and intangible property and franchises of Complainant in the State of North Carolina, including its lessor companies, the Atlantic and North Carolina Railroad Company and the Carthage and Pinehurst Railroad Company, to the sum of $22,840,932.00.

(11) Your Complainant alleges and shows that the said sum of $22,840,932.00 is in excess of the "actual value in money" of said properties, including the franchises of said Complainant and its lessors, Atlantic and North Carolina Railroad Company and Carthage and Pinehurst Railroad Company, and all of their tangible and intangible property, and that the said Commissioner of Revenue (State Tax Commission) has not in assessing the value of said property for taxation observed the plain mandate of the laws of the State of North Carolina.

(12) Prior to January 1, 1921, The Interstate Commerce Commission reported to the State of North Carolina, under the provisions of the Interstate Commerce Act, that the cost of reproduction now, less depreciation of complainant's entire properties, located in the States of Virginia and North Carolina, including the part leased from the Atlantic and North Carolina Railroad and the Carthage and Pinehurst Railroad was $23,249,048.00.

The amount expended by Complainant on said properties since the valuation date, which under the rules of accounting adopted by the Interstate Commerce Commission is chargeable to capital account, after deducting (in accordance with the rules of the Interstate Commerce Commission) depreciation, would make the cost of reproduction now less depreciation of Complainant's said
15 entire properties (brought down to date) $26,028,366.00.

(13) On June 11, 1921, the Interstate Commerce Commission under the provisions of the Interstate Commerce Act, reported to the State of North Carolina, that the final value of complainant's entire common carrier properties, as a going concern, as the term value was used in the Interstate Commerce Act was $24,663,840.00, which includes working capital and supplies amounting to $663,575.00.

If there be added thereto Complainant's new-carrier properties, which the Commission reported to cost less depreciation $438,141.00, the entire value (as that term is used in the Interstate Commerce Act) would be $25,101,981.00.

If it be assumed that all of Complainant's property required to be listed locally, is non-carrier property (which is not a correct assumption) and the assessed value of the locally listed property, to wit: $638,215.00 be added to the valuation reported by the Interstate Commerce Commission it would make the value of complainant's entire property $25,302,055.00.

(14) Complainant attaches hereto a statement marked Exhibit B, showing the amount of stocks, bonds, and other securities of Complainant, and its two said lessor companies, outstanding during the years 1915 to 1920 inclusive, together with the average sale value of such securities during each of said years. The sale value of such securities during the entire year of 1921 is, and has been less than any previous year.

The sale value of complainant's entire properties, including that of its two said lessors, as such property is sold in the open market, not at forced sale, is on the average for six years past $17,-
16 717,000.00, and for the years 1919, 1920, and 1921, much less than that sum.

(15) That the report of the Interstate Commerce Commission, made to the State of North Carolina, as aforesaid, prior to January 1, 1921, showed the relative cost of reproduction now less depreciation of Complainant's said entire properties to be Virginia 18 per cent, North Carolina 82 per cent.

The relative mileage of said properties in said two States, is Virginia 12.246 per cent and North Carolina 87.754 per cent.

(16) Dividing the aforesaid different valuations of said properties between the two States on a mileage pro rate, we have the following results:

Cost of Reproduction now, less depreciation, brought down to date, Sec. 12 of this bill	$26,028,366.00
Portion in North Carolina, 87.734%	22,840,932.00
Portion in Virginia, 12.246%	3,187,434.00
	$26,028,366.00
Value of said properties as reported by Interstate Commerce Commission June 11, 1921	$24,663,840.00
Portion in Virginia, 12.246%	3,020,234.00
Portion in North Carolina, 87.754%	21,643,606.00
	$24,663,840.00

If there be added as non-carrier property, the property in North Carolina locally listed, to wit: $638,215.00, we have in North Carolina, as the entire value, as that term is used in the Interstate Commerce Act, in North Carolina, a value of $22,281,821.00.

Value of said properties as fixed by the public by a sale of bonds and stocks	$17,717,000.00
Portion in Virginia, 12.246%	2,169,624.00
Portion in North Carolina, 87.754%	15,547,376.00
	$17,717,000.00

17 That if the aforesaid different values be divided between the two States on the basis of cost of reproduction now less depreciation as appears from the report of the Interstate Commerce Commission:

(1) Reproduction now less depreciation, brought down to date, report prior to Jan. 1, 1921	$26,028,366.00
18% to Virginia	4,685,106.00
82% to North Carolina	21,343,260.00
	$26,028,366.00
(2) Value as set out in report of June 11, 1921, adding to North Carolina's proportion the property listed locally	$24,663,840.00
18% to Virginia	4,439,491.00
82% to North Carolina	20,224,349.00
	$24,663,840.00

Add to North Carolina percentage $638,215.00 property listed locally we have $20,862,564.00.

(3) Dividing the value placed by the public on said properties, as shown by the sale of the securities on the cost of reproduction basis, we have	$17,717,000.00
Virginia, 18%	3,189,060.00
North Carolina, 82%	14,527,940.00
	$17,717,000.00

(17) Complainant shows that the Commissioner of Revenue (State Tax Commission), valued Complainant's said properties, including the two leased lines as a whole at $26,028,366.00, including the franchises, as required by the provisions of Chapter 38, Public Laws, 1921, and then allocated to North Carolina a mileage pro rate to wit: 87.754 per cent of the whole, and valued Complainant's property in North Carolina, tangible and intangible, including the franchises, as required by said Chapter 38, Public Laws
18 1921, at $22,840,932.00, that being 87.754 per cent of $26,023,366.00.

(18) The Commissioner of Revenue (State Tax Commission) under Chapter 38 Public Laws 1921 (Machinery Act) has certified to the various Counties, Cities, Towns, and local taxing districts, where Complainant's property is located, their respective proportionate part of the values so assessed by him, so that the said counties, cities, towns, and local taxing districts might levy and collect an ad valorem tax on said property as authorized by the Constitution and statutes of the State.

From the best information now obtainable, the ad valorem taxes which have been assessed against Complainant's property by the counties, cities, towns, and local taxing districts, will equal, if not exceed 1.50 per cent upon the whole, and Complainant, upon said properties, will be required to pay as a property tax to the counties, cities, and towns, not less than $275,000.00.

(19) That while complainant's said properties are valued at more than their actual value in money, the property of other property owners in the State of North Carolina, and in the several counties, cities, towns, and local taxing districts is under the law and the practice of the local assessors, and the State Board of Equalization, of which the Commissioner of Revenue is a member, is valued at either its actual value in money, or at less than its actual value in money. That the result of the failure of the Commissioner of Revenue to observe the plain mandate of the Constitution and statutes in the valuation of complainant's property is to unjustly and illegally discriminate against complainant, all in viola-
19 tion of the Constitution of the State, and in violation of the fifteenth Amendment to the Constitution of the United States.

Complainant further shows that many of the Counties, Cities, Towns, and Local Taxing Districts have in violation of the Constitution of the State, undertaken to levy and assess against complainant, illegal and excessive levies, on the illegal and excessive valuations so made. That unless the said illegal and excessive valuation be corrected, complainant will be compelled to pay many illegal and excessive taxes. That neither the tax collectors, nor the several taxing districts have any power to remedy the assessment made by the Commissioner of Revenue to change the same. That unless the several sheriffs and tax collectors be enjoined and restrained from collecting said taxes upon said illegal assessments, complainant will be remediless and will be involved in a multiplicity of suits.

(20) Complainant attaches hereto a statement (marked Exhibit C, which is prayed to be taken as a part hereof) showing the mileage of first main line track operated, total operating revenue, total operating expenses, Railway Tax Accruals and uncollectible railway revenue, railway operating income, revenue from miscellaneous operations, expenses of miscellaneous operation, total operating income, non-operating income, gross income, deductions from gross income and net income or deficit for the years 1916, 1917, 1918, 1919, 1920, and eight months of 1921. The properties were operated by United States Railroad Administration during the years 1918, 1919, and two months of 1920.

(21) Complainant is informed, and so avers, that the Commissioner of Revenue has certified to the State Auditor the said
20 sum of $22,840,932.00 as the value of all of Complainant's property in the State of North Carolina, and its two said lessors, tangible and intangible, including the franchise, so that the State Auditor might assess against Complainant the taxes imposed under Section 82 of Chapter 34, Public Laws, 1921. (Revenue Act.)

(22) That the Constitution requires that the Commissioner of Revenue assess complainant's property at its actual value in money. That the statutes of North Carolina, Chapter 38, Public Laws 1921 (Machinery Act) defines "actual value in money" to mean the true and actual value of the property if sold in the manner in which such property is usually sold, but not by forced sale thereof, and shall be held and deemed to mean what the property would bring at each sale when sold in such manner as such properties are usually sold. Section 23.

(23) Complainant shows that railroad property is not sold as a whole, that the only way it can be sold is by a sale of its stocks and bonds, upon the markets of the country, that the value of complainant's entire properties, when sold as such properties, are usualy sold, is and has been on the average for six years last past $17,717,000.00, including that both in North Carolina and Virginia, that the value for 1921 was less than that sum. That the Commissioner of Revenue did not ascertain the sale value of complainant's property in the manner in which it is usually sold, by a sale of its and its lessor

companies' stocks and bonds, divide that value between the states in which it is situate on either a mileage pro rate or on a percentage of cost of reproduction and assess complainant's property on that basis, as required by the Constitution, but adopted another
21 method, to wit: The cost of reproduction now, less depreciation brought down to date, and assessed complainant's property on that basis, and allotted to North Carolina a mileage pro rate thereof.

Said assessment was made contrary to the mandate of the Constitution of the State, denied to complainant the equal protection of the laws, deprives it of its property without due process of law, in violation of the fourteenth amendment to the Constitution of the United States.

(24) The General Assembly of North Carolina at its biennial session held in 1921, adopted a system of taxation for the support of the State, generally known and referred to as the Revenue Act (and hereinafter referred to by that name) being Chapter 34 of the Public Laws of 1921, being an Act entitled, "An Act to Raise Revenue," ratified the eighth day of March, 1921. The whole of said Act may be referred to. That part of said Act deemed material to this controversy is set out in sections 3, 4, 26, 76, 82, and 85, and are prayed to be taken as a part hereof

Under the said system of taxation, it is declared that no tax upon property (for the year 1921) shall be levied for any State purpose; that the State government shall be maintained out of:

(*a*) Taxes upon inheritances, imposed under Schedule AA of said Act.

(*b*) A system of income taxes, imposed under Schedule D of the said Act, under which a tax of 3 per cent. upon the "Net Operating Railway Revenue" of Railroad Companies—after making certain additions and deductions thereto—is levied upon Railroad Companies. The tax year for that tax has not been completed, and no tax can be levied thereunder until the tax year is completed and the proper basis established.

22 (*c*) A system of occupation taxes, or taxes levied and imposed upon individuals and corporations for the right and privilege to engage in, conduct and carry on the trade, business or occupation taxed by said statute.

(25) Complainant long prior to January 1, 1921, duly filed with the Interstate Commerce Commission and duly published tariffs, as required by "An Act to Regulate Commerce," approved February 4, 1887, and the several amendments and supplements thereto (commonly known and hereinafter referred to as the Interstate Commerce Act) and was long prior to January 1, 1921, and at all times since said date has been duly authorized and empowered to engage in and carry on over its said line of railroad, and every part thereof, the business of conducting and carrying on commerce among the several states and foreign commerce, and Complainant prior to Janu-

ary 1, 1921, and at all times since said date, and now is, engaged in carrying on and conducting, as a common carrier of freight and passengers by railroad, engaged in commerce with foreign nations and among the States, which business is conducted and carried on over and by means of said line of railroad, and every part and parcel thereof, situate in the State of North Carolina, as well as in the State of Virginia, and all and every of the agencies owned or employed by Complainant in the State of North Carolina, including the property of Complainant and its lessors, is used and engaged in conducting and carrying on the business and occupation of commerce with foreign nations and among the several states.

Complainant further says, that in order to reduce the burden upon interstate commerce, it uses the same agencies in the business of carrying on intrastate commerce; that the amount of intrastate commerce carried is very small as compared with the
23 interstate commerce. Complainant cannot say the exact proportion, but the best estimate that can be given is that not more than fifteen per cent. (15%) or twenty per cent. (20%) of the entire revenue in North Carolina arises from intrastate commerce, while eighty or eighty-five per cent. arises from interstate commerce.

(26) Complainant shows that under the Interstate Commerce Act, as amended, it is required to conduct and carry on in the State of North Carolina, on its said line of railroad, and every part thereof, the business of a common carrier of freight and passengers by railroad, in commerce with foreign nations and among the several states, until the Interstate Commerce Commission, upon application to it made and after hearing, shall or may authorize complainant to cease and desist from said business, and under said Interstate Commerce Act, as amended, Complainant may not until so authorized by the Interstate Commerce Commission cease and desist from using its said line of railroad and the agencies connected therewith in North Carolina in intrastate commerce of said State as an ancillary or aid in reducing the cost of conducting such interstate commerce.

(27) Complainant is informed, believes, and so charges, that acting in accordance with the directions contained in Sec. 82 (6½) of Chapter 34, Public Laws of 1921 (Revenue Act), the Commissioner of Revenue (State Tax Commission) certified to Baxter Durham, State Auditor, as the value upon which the amount of taxes which should be paid by Norfolk-Southern Railroad Company, as a franchise or privilege tax, should be calculated the sum of $22,840,932.00, certifying that to be the value of the property, tangible
and intangible of Norfolk-Southern Railroad Company, in-
24 cluding the property of its said lessors Atlantic and North Carolina Railroad Company and Carthage and Pinehurst Railroad Company, and the franchise of the said companies, and the said sum being the amount at which the property of complainant and its two said lessors, tangible and intangible, including their franchises, had been valued for ad valorem taxes; and in like man-

ner certified to the State Auditor for like purposes, the sum of $372,300.00 as the value of the property of the Durham and South Carolina Railroad Company, which property is under lease to Complainant, and the taxes on which Complainant is obligated to pay.

(28) That Baxter Durham, State Auditor, has notified complainant that there has been levied against it under the provisions of section 82 (6½) Chapter 34 Public Laws 1921 (Revenue Act), a franchise tax of one-tenth of one per cent upon $22,840,932.00 and that the tax amounted to $22,840.92, and that unless the same was paid within thirty days from September 22, 1921, the pains and penalties authorized by law would be inflicted upon complainant.

The said Baxter Durham, State Auditor, on and as of September 22, 1921, gave notice to Durham and South Carolina Railroad Company, that there had been levied and assessed against it under section 82 (6½) Chapter 34, Public Laws 1921 (Revenue Act), a tax of one-tenth of one per cent upon $372,300.00, that being the assessed value of Durham and South Carolina Railroad Company's property, tangible and intangible, including the franchise in the State of North Carolina, and that the tax thereon was $372.30, and that unless it was paid within thirty days from said date the pains and penalties authorized by the statutes would be imposed upon complainant.

25 That if the tax is legal and authorized by law, complainant is under obligation to pay the same, not only by the terms of its express contract, but by the decisions of the Supreme Court of the State of North Carolina. See Blount vs. Willard, 33 N. C., 634.

Complainant is informed, believes and alleges that the said State officers, to wit: Augustus D. Watts, Commissioner of Revenue, Baxter Durham, State Auditor, Benjamin R. Lacy, State Treasurer, will in obedience to the statutes of North Carolina, undertake to collect the said amount of taxes set out in said notices as a privilege or license tax, for the privilege to complainant of operating its said line of railroad, and conducting and carrying on the business of a common carrier of freight and passengers by railroad, engaged in inter and intrastate commerce, and that if said taxes be not paid, will undertake to impose and inflict upon complainant and its several lessors, the pains and penalties authorized by law to be inflicted.

(29) Complainant shows that said tax is a tax measured by a given per cent of the amount of the assessed value of Complainant's property as found by the Commissioner of Revenue (State Tax Commission), and is imposed upon complainant or attempted to be imposed for the privilege of doing the business of a common carrier of freight and passengers by railroad, engaged in commerce with foreign nations and among the several states, conducted and carried on by complainant over said lines of railroad, by virtue of power and authority of its charter, obtained from the State of Virginia, and by authority of and in obedience to the Constitution and laws of the United States; that as such it constitutes a direct burden upon commerce with foreign nations and among the several states, and is

in violation of the Constitution and laws of the United States,
26 and especially of paragraph 3, section 8, of article 1 of the Constitution, and the laws passed pursuant thereto.

That in so far as the said Revenue Act, by said section 82 (6½), or any other section thereof, authorizes or attempts to levy and/or impose the said tax as license tax upon complainant for the right and privilege of doing business in the State of North Carolina, as a common carrier of freight and passengers, over the said line of railroad, engaged in commerce with foreign nations and among the several states, it is in violation of the Constitution of the United States, article 1, section 8, paragraph 3 thereof, and of the statutes passed pursuant to the power thereby vested in Congress, and constitutes a direct burden upon such commerce; that in so far as the said Revenue Act attempts to levy and impose the said license tax, or any other license tax upon complainant for the right or privilege to exist as a corporation or to conduct and carry on business it denies to complainant and its said lessors the equal protection of the law, and its payment and collection will deprive complainant and its said lessors of their property without due process of law, and is in violation of the fourteenth Amendment to the Constitution of the United States; that the said tax is contrary to the provisions of the Constitution of North Carolina. as set out in Article V thereof, for that it destroys the uniformity of taxation, which the Constitution imposes upon any system of taxation adopted by the Legislature, and denies to complainant the equal protection of the Laws, and deprives it of its property without due process of law, all in violation of the fourteenth Amendment to the Constitution of the United States, as well as in violation of the Constitution of the State of North Carolina.

27 (30) Complainant shows that under the laws of North Carolina, it cannot pay said taxes and bring suit against the State to recover the same back, as there is no provision in the Laws of North Carolina which authorizes the payment of contested taxes, which are payable direct to the State, and the institution of a suit against the officer collecting the same, or any other person to recover the same back; that the said tax is sought to be made a lien upon the complainant's said property, prior to all other liens, and to displace pro tanto all prior liens, and as such constitutes a cloud upon complainant's title to its said property; that unless complainant or its lessors Atlantic and North Carolina Railroad Company, Carthage and Pinehurst Railroad Company, or Durham and South Carolina Railroad Company, pay said taxes, that the lien upon said properties attempted to be created by the said statute, if valid, will be a lien prior to the lease which said companies have made to complainant, and as such constitutes a cloud upon complainant's own property, and a cloud upon complainant's leaseholds in the other properties, and will, unless said taxes are paid, when due and payable, if valid, be a ground for the avoidance of said leases; that in addition to the aforesaid matters, unless said taxes are paid at the time and in the manner required by the said statute, to wit: section 82, Chapter 34,

of the Public Laws of 1921, upon report made to him, as required by Law, the Secretary of State will undertake and attempt to cancel complainant's right to do business in the said State, and will undertake to cancel and annul the corporate existence of its lessor companies, Atlantic and North Carolina Railroad Company, Carthage and Pinehurst Railroad Company, and Durham and South Carolina Railroad Company, and in addition, after said cancellations are made, if any agent, employee or officer of any of said corporations, or the complainant company, shall undertake to do or
28 perform any act for and on behalf of the said corporations, to direct or carry out any business for and on behalf of said corporations, such agents and officers will be made guilty of a crime and made liable to a fine of not less than $100.00, nor more than $1,000.00.

(31) That the aforesaid license or privilege tax of one tenth of one per cent imposed upon railroads under section 82 (6½) chapter 34, Public Laws of 1921 (Revenue Act) is one of the taxes imposed under section 82; that subsection 3½ of said section 82 provides:

"That where a report required to be made under the provisions of this section to the State Tax Commission, by any domestic corporation shows capital stock issued and outstanding by any such company to be less than one-half of the assessed value for taxation of all the property of such company in this State for the year in which the report is made, or the report of any foreign corporation shows the proportion of the capital stock of such foreign corporation apportionable to this State under the rules laid down in section 82 of this act, to be less than one-half of the assessed value of taxation for all the property of such company in this State, for the year in which such report is made, the measure of the extent to which the corporate franchise of any such company is being used and the amount of franchise tax to be paid by any such corporation shall be calculated with reference to the sum of one-half of the total assessed value of all the property of such corporation in this State."

Complainant shows that it reported to the State Tax Commission, the amount of its capital stock, to wit: $16,000,000.00, dividing this capital stock between the States of Virginia and North Carolina, upon the same percentage basis as the complainant is informed and believes the State Tax Commission divided the property of the complainant, to wit: 87.754 to North Carolina and 12.246 to Virginia; that that part of its capital stock allocatable to North Caro-
29 lina would be $14,040,640.00; that if the said capital stock be allocated between the two States on the basis of the relative cost of reproduction now less depreciation, as shown by the report of the Interstate Commerce Commission, to wit: eighty-two per cent to North Carolina, and eighteen per cent to Virginia, the proportion of the capital stock of complainant allocatable to North Carolina would be $13,120,000.00.

That said section 82 of Chapter 34 of the Public Laws of 1921 (Revenue Act) undertakes to make an arbitrary classification against corporations, based on the amount of property in the State, compared with the amount of capital stock issued and outstanding, and allocatable to the State, and under said section, if the amount of property in the State listed for ad valorem taxes is more than double the amount of the capital stock allocatable to the State in the manner required by section 82 of the Revenue Act, then and in that event the franchise, license or privilege tax imposed under said section 82 is made payable upon one-half of the assessed valuation of the property, whereas, otherwise, it is made payable upon the entire assessed valuation of the property. That such classification is arbitrary, unreasonable and unjust, is in violation of the uniformity provisions of the Constitution of the State of North Carolina, denies to complainant and its lessors, the equal protection of the laws, and undertakes to deprive them of their property without due process of law, all in violation of the fourteenth amendment to the Constitution of the United States.

(32) The pains and penalties authorized to be inflicted upon the complainant in the event of the failure to pay said taxes and permit suit to be brought are so onerous and oppressive as to deny to complainant and said lessors the equal protection of the law and to deprive it of its property without due process of law, all in violation of the fourteenth amendment to the Constitution of the United States, and complainant has no adequate remedy at law against such oppressive, unjust and illegal taxes, and unless it can be protected in equity is without protection.

(33) Complainant shows that, under the laws of North Carolina, in addition to the right of the State to bring an action at law to collect said tax, the following penalties are sought to be imposed:

(*a*) The said tax is sought to be made a lien upon Complainant's said property prior to all other liens, and to displace pro tanto all prior liens and as such constitute a cloud upon Complainant's title to its said properties, Section 82 (12).

(*b*) The Secretary of State, if said tax be not paid within ninety days, is required to cancel Complainant's right to do business in the State, and upon such cancellation being made, if any agent or officer undertakes to transact any business for complainant in said State, he is made guilty of a crime and liable to a fine of not less than one hundred dollars nor more than one thousand dollars. Section 82 (17 and 18).

Whereas, and forasmuch as Complainant is remediless in the premises, according to the common law, and remediable only in equity, and that complainant may not be subjected to the pains and penalties set out in the statutes of North Carolina, and that the cloud may be removed from the title to its said properties, and, that com-

plainant may not suffer irreparable damage and that its business of an interstate carrier of passengers and freight required to be carried on under the Constitution and laws of the United States may not be interfered with, or unduly burdened, and that it may not be
31 deprived of its property without due process of law, nor denied the equal protection of the laws, and that the correct amount, if any, of taxes which complainant shall be required to pay to State of North Carolina, under said Revenue Act, Chapter 34, Public Laws, 1921 may be ascertained, complainant prays for a writ subpena to issue against the defendants and each and every one of them named and described, commanding them to appear and full and true answer make to this bill of complaint and the several things and matters therein set out, but not under oath, an answer under oath being expressly waived, as to each and every of said defendants. That each of the defendants named in their several individual and official capacities be enjoined and restrained from taking any steps to collect said taxes levied or imposed under Section 82 of Chapter 34 Public Laws, 1921 (Revenue Act), or to inflict upon complainant and/or its several lessors, any of the pains and penalties authorized to be imposed and inflicted by the laws of North Carolina, and that a preliminary injunction be issued pending the final hearing and that upon the final hearing the Commissioner of Revenue be enjoined and commanded to cancel the illegal assessment aforesaid, to withdraw from the several counties, cities, towns and local taxing districts the aforesaid illegal assessments and to certify for ad valorem taxation, a true and correct assessment, made in accordance with the mandate of the Constitution of the State, and that the said taxes assessed or attempted to be assessed by Baxter Durham be declared to be illegal and void and that the several defendants, named as sheriffs and tax collectors be enjoined and restrained, both temporarily until the hearing, and after the final hearing permanently, from selling or exposing for sale, any of complainant's, or its lessors' property, on account of said taxes, or the collection of any penalties for failure to pay said taxes, and
32 for all other, further, general and special relief as in equity it may be entitled to.

This is the first application for injunction in this cause.

JOHN M. ROBINSON,
W. B. RODMAN, JR.,
Solicitors for Complainant.

W. B. RODMAN,
C. M. BAIN,
Of Counsel.

STATE OF NORTH CAROLINA,
City of Norfolk:

M. S. Hawkins, being duly sworn, deposes and says that complainant, Norfolk-Southern Railroad Company, is a corporation, and that he is one of its officers, to wit: Secretary, that he has read the foregoing bill of complaint, and knows the contents thereof, and that

the same is true to his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

M. S. HAWKINS.

Sworn and subscribed to before me this twel-th day of October, 1921.

J. R. PRITCHARD,
Notary Public.

My commission expires on the tenth day of October, 1925.

33 EXHIBIT A.

Article V—Revenue and Taxes.

Section 3. Taxation shall be by uniform rule and ad valorem: Exemptions: Laws shall be passed taxing by a uniform rule all moneys, credits, investments on bonus, stock joint stock corporations or otherwise; and also all real and personal property according to its true value in money.

* * * * * * *

The general assembly may also tax trades, professions, franchises, and income.

* * * * * * *

Section 6. Taxes levied for County purposes: The total of the State and County tax on property shall not exceed fifteen cents on the hundred dollars value of property, except when the County property tax is levied for a special purpose and with the special approval of the general assembly, which may be done by special or general act: Provided, this limitation shall not apply to taxes levied for the maintenance of the public schools of the State for the term required by Article nine, Section three of the constitution: Provided, further, the State tax shall not exceed five cents on the hundred dollars of value of property.

Article VII—Municipal Corporations.

Section 9. Taxes to be ad valorem: All taxes levied by any county, city, town or township, shall be uniform and ad valorem upon all property in the same; except property exempted by this constitution.

Article VIII—Corporations Other Than Municipal.

Section 4. Legislation to provide for organizing cities, towns, etc.: It shall be the duty of the legislature to provide by general laws for the organization of cities, towns and municipal villages, and to restrict their powers of taxation, assessment, borrowing money, contracting debts and loaning their credits so as to prevent abuses in assessments and in contracting debts by such municipal corporations.

Statement Showing Outstanding Capital Stock and Bonded Indebtedness of Norfolk-Southern Railroad Company, Atlantic and North Carolina Railroad Company, and Carthage and Pinehurst Railroad Company for the Years 1915 *to* 1920, *Inclusive.*

Designation.	Par value amount in hands of public.	Market value. 1915.	1916.	1917.	1918.	1919.	1920.
1. N&S 1st Mtg. 5's..	$1,655,000	$1,630,175	$1,638,450	$1,634,312	$1,373,650	$1,406,750	$1,266,075
2. N&S 1st Gen. M. 5's	825,000	742,500	713,625	610,500	552,750	556,875	478,500
3. S&C Cons. Mtg. 5's	650,000	585,000	552,500	481,000	435,500	442,000	265,500
4. R&CF 1st Mtg. 5's	137,000	120,450	115,423	106,860	97,270	98,640	90,240
5. R&S Ry. 1st. Mtg. 5's	374,000	329,120	313,330	289,850	265,540	269,280	231,880
6. A. R&S Ry. Gen. Mtg. 6's	176,000	154,880	147,400	.....	.....	.....	.....
7. A&A 1st Mtg. 5's.	164,000	131,200	131,200	118,900	109,880	106,600	98,400
8. B. NSRR 1st & R. M. 5's	13,294,000	10,444,140	10,489,000	10,086,360	8,262,530	7,980,250	6,640,710
9. A&NC 1st Mtg. 6's	325,000	325,000	325,000	325,000	325,000	325,000	325,000
10. C&PRR 1st Mtg. 6's	37,500	37,500	37,500	37,500	37,500	37,500	37,500
11. C. Equip. Tr. Ser. A 5's	425,000	414,375	332,500	282,000	235,000	188,000	141,000
12. D. Equip. Tr. Ser. B 6's	22,400	.....	22,464	19,968	17,290	14,664	12,545

13. Gen. Equip. Trs. Notes	.....	.....	34,000	10,000	.....	.....	.....
14. United Iron Works Notes ..	.....	.....	3,120	.....	.....	.....	.....
15. E. N.S. Collateral Trust 3 yr. notes 6 and 7%	1,000,000	.....	.....	750,000	750,000	750,000	750,000
16. F. Equip. Trust No. 55—6% ..	123,200	.....	.....	.....	.....	.....	123,200

Capital Stock.

NSRR Co.	$16,000,000	$3,360,000	$4,120,000	$3,880,000	$2,730,000	$2,330,000	$3,040,000
A&NCRR Co.	1,800,000	1,350,000	1,350,000	1,350,000	1,350,000	1,350,000	1,350,000
C&PRR Co.	69,900	13,980	13,980	13,980	13,980	13,980	13,980
Total	.....	$19,626,320	$20,339,392	$19,996,730	$16,605,890	$15,859,539	$14,866,230

Average value for six years—$17,717,700.

A—Retired in 1917.

B—Amount outstanding: 1915—$12,294,000; 1916—$12,870,000; 1917—$12,870,000; 1918—$12,835,000; 1919—$12,400,000; 1920—$12,355,000.

C—These notes are being retired at the rate of $50,000 par value per year.

D—These notes are being retired at the rate of $2,600 per year.

E—Issued in 1917.

F—Issued in 1920.

35

EXHIBIT C.

	1916.	1917.	1918.	1919.	1920.	Eight months of 1921.
1. Miles Operated .	907.71	907.71	907.41	906.77	928.10	942.83
2. Total Oper. Rev.	$4,939,172.28	$5,299,913.71	$5,753,643.86	$6,591,277.09	$7,750,826.08	$5,231,450.80
3. Total Oper. Exp.	3,272,199.85	3,630,368.17	5,273,561.06	6,197,545.80	8,274,079.32	4,596,388.91
4. Ry. Oper. Rev. .	1,666,972.43	1,619,545.54	480,082.82	373,681.29	*523,253.24	635,061.89
5. Ry. Tax. Accru. and Uncollectible Ry. Rev..	163,729.73	196,078.81	194,133.25	212,915.58	253,039.78	259,612.81
6. Ry. Oper. Inc. .	1,503,242.70	1,423,466.73	285,949.57	180,765.71	*776,293.02	375,449.08
7. Rev. from Misc. Oper.	.....	.....	.....	.....	.....	63,181.69
8. Exp. of Misc. Oper.	.....	.....	.....	.....	.....	*67,809.20
9. Total Oper. Inc.	1,503,242.70	1,423,466.73	285,949.57	180,765.71	*776,293.02	370,821.57
10. Non-Oper. Inc. .	62,802.29	73,323.01	221,702.41	242,820.70	67,949.63	465,742.46
11. Gross Income ..	1,566,044.99	1,499,789.74	507,651.98	423,586.41	*708,343.39	836,564.03
12. Total Deductions from Gross Inc.	1,060,533.91	1,160,106.30	47,042.19	112,179.59	154,595.53	1,237,983.71
13. Net Income ...	505,511.08	339,683.44	460,609.79	311,406.82	*862,938.92	*401,329.68

*Deficit.

36 *Application for Interlocutory Injunction.*

Filed October 17, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK-SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Application for Interlocutory Injunction.

Comes the above-named plaintiff and shows the Court:

That it has instituted in this Court by bill of complaint an action against A. D. Watts, as Commissioner of Revenue of the State of North Carolina, and other defendants as shown in said bill which is now referred to and made a part of this application, the object and purpose of the action being to secure from this Honorable Court an order enjoining preliminarily and perpetually the defendants, who are tax assessing, collecting, and enforcing officers, of the State of North Carolina and its municipal subdivisions, from collecting or instituting proceedings to collect State, county, municipal, or other taxes levied upon or based upon an illegal over-assessment of plaintiff's property, made and certified to them by the Revenue Commissioner of North Carolina, which assessment is contrary to the Constitution and laws of North Carolina and the Constitution of the United States. The bill alleges and sets forth the grounds of unconstitutionality of the assessment and of the statutes of North Carolina under which said invalid assessment was made and under which the illegal taxes will be collected by the defendants named
37 in said bill unless restrained by this Honorable Court, all of which is more fully alleged, set out, and explained in the bill of complaint filed herein.

Plaintiff alleges that the franchise tax levied under Section 82 of the Revenue Act of North Carolina, ratified March 8, 1921, is unconstitutional and that no tax can be levied thereon under any assessment, and the action of the State's tax collecting officer in the execution of said void statute is sought to be enjoined. Said tax is due and payable on or before the twenty-second day of October, 1921, and if not paid by December 1, 1921, a penalty of ten per cent (10%) is added to such tax, and other pains and penalties are inflicted.

The ad valorem taxes levied by the counties, towns and local taxing districts, upon said illegal assessments is now due and payable, and unless paid the Sheriff may levy and sell property of this plaintiff

after November 1, 1921, and other pains and penalties will be inflicted.

The municipal and other taxes levied upon said illegal assessments will become due and the collection thereof will be undertaken prior to the determination of this cause unless the tax collecting officers are restrained.

Wherefore, application is made under Section 266 of the Judicial Code for an interlocutory injunction as prayed for in said bill, and this Court is petitioned to call to his assistance to hear and determine this application two other Judges, and that the statutory notice of the hearing of this application be given the Governor and the Attorney General of the State of North Carolina and each of the defendants to the said bill, and an order issue requiring the defendants to show cause at the time and place to be fixed by this Court according to law why said interlocutory injunction should not issue as prayed for.

This application is based upon the verified bill of complaint on file herein.

JOHN M. ROBINSON,
Attorney for Plaintiff.

38 *Order on Application for Interlocutory Injunction.*

Filed October 17, 1921.

In Equity.

No. 439.

NORFOLK-SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Order for District Judge on Application for Interlocutory Injunction.

The application for an interlocutory injunction was presented to me this 17th day of October, 1921; and having read and considered the verified bill filed in this cause, and the application for a hearing for interlocutory injunction under Section 266 of the Judicial Code, and being advised that for the reasons set forth in said application and upon the grounds stated therein and in the verified bill, plaintiff is entitled to have its application heard under Section 266 of the Judicial Code:

It is ordered, that the application be filed and a hearing of the application for an interlocutory injunction be had and proceeded with in accordance with Section 266 of the Judicial Code as amended by Act of Congress approved March 14, 1913, and such hearing is set down for the 31 day of Oct., 1921, at the United States Court rooms in the city of Newbern North Carolina, at 10 o'clock.

It is further ordered, that notice of said hearing, not less than five

days, shall be given to the Governor and the Attorney General of the State of North Carolina, and to each of the defendants to this suit. And I hereby call to my assistance at said hearing of said application the Honorable Edmund Waddill Jr., Circuit Judge of the Circuit, and the Honorable Jas. E. Boyd, District Judge of the Western District of North Carolina.

This October 17, 1921, at Wilson, North Carolina.

H. G. CONNOR,
District Judge.

39 *Notice of Hearing of Application for Interlocutory Injunction.*

Filed October 17, 1921.

In Equity.

No. 439.

NORFOLK-SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al.

Notice of Hearing of Application for Interlocutory Injunction under Judicial Code, Section 266.

To Honorable Cameron Morrison, Governor of the State of North Carolina; Honorable James S. Manning, Attorney-General of the State of North Carolina, and Frank Nash, Assist. Atty. General; Honorable A. D. Watts, Revenue Commissioner of the State of North Carolina; Honorable Baxter Durham, Auditor of the State of North Carolina; Honorable Benjamin R. Lacy, Treasurer of the State of North Carolina; Honorable J. Bryan Grimes, Secretary of State of the State of North Carolina, and to each of the defendants named in the above bill:

You, and each of you, are hereby notified that the Norfolk-Southern Railroad Company, plaintiff, has filed its verified bill of complaint in the District Court of the United States for the Eastern District of North Carolina against A. D. Watts, Revenue Commissioner, et al., praying an injunction against the named tax assessing, collecting and enforcing officers of the State of North Carolina and its municipal subdivisions from collecting or instituting proceedings to collect, State, county, municipal or other taxes levied upon or based upon the alleged illegal over-assessment of plaintiff's property for the year 1921, made and certified to by the Revenue Commissioner of the State of North Carolina, and also praying that said tax laws of North Carolina be declared unconstitutional, as will appear from the bill filed herein.

In this cause plaintiff has made application for an interlocutory injunction under Section 266 of the Judicial Code of the United States. The application for such interlocutory injunction will be heard in the United States District Court, in the city of Newbern, North Carolina, on the 31 day of Oct., 1921, at 10 o'clock A. M., and you, and each of you, are notified to appear at said time and place and show cause, if any, why the interlocutory injunction prayed for should not be granted.

Done in open court this 17 day of Oct. 1921.

H. G. CONNOR,
Judge.

40 *Service of Notice of Hearing.*

Filed Oct. 24, 1921.

Return on Service of Notice of Hearing of Plaintiff's Application for Interlocutory Injunction.

STATE OF NORTH CAROLINA,
Eastern District of North Carolina, ss:

I hereby certify and return that I served the foregoing notice on the therein named parties as below by handing to and leaving a true and correct copy thereof with each personally, at Raleigh in said District, on the 19 day of October 1921.

GEO. H. BELLAMY,
U. S. Marshal,
By B. H. MEADOWS,
Deputy.

Cameron Morrison.
J. S. Manning.
Frank Nash.
A. D. Watts.
Baxter Durham.
B. R. Lacy.
J. Bryan Grimes.

Marshal's fees, $14.00.

41 *Stipulation for Service of Subpœna.*

Filed Oct. 18, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina; BAXTER Durham, State Auditor of North Carolina; Benjamin R. Lacy, State Treasurer of North Carolina; J. Bryan Grimes, Secretary of State of North Carolina; James S. Manning, Attorney General of North Carolina; Frank Nash, Asst. Attorney General of North Carolina and Others.

Stipulation.

In this cause it is agreed that a copy of the bill and order to show cause why a preliminary injunction should not be issued, shall be served upon the defendants, other than the State Officials, by the Clerk of the United States District Court mailing to each of the defendants named a copy of the bill and order to show cause. As to the State Officials a copy of the bill and order to show cause shall be served by the Marshal in the usual way.

The writ of subpœna shall be served in the same manner as the bill and order to show cause, that is, by the Marshal upon the State Officials named in the bill and by the Clerk of the United States Clerk mailing to each of the defendants named a copy of the subpœna, all the papers named to be sent by registered mail. And it is stipulated that this service shall be the same in legal effect
42 as if made by the Marshal.

JAMES S. MANNING,
Attorney General.
NORFOLK SOUTHERN RAILROAD COMPANY,
By W. B. RODMAN,
General Counsel.

October 18, 1921.

43 *Subpœna.*

Issued Oct. 18, 1921.

UNITED STATES OF AMERICA,
Eastern District of North Carolina:

District Court, Fourth Circuuit, at Raleigh.

The United States of America to J. Bryan Grimes, Secretary of State of N. C., Raleigh, N. C.; James S, Manning, Attorney General of North Car., Raleigh; Frank Nash, Assistant Attorney General for N. C., Raleigh, Greeting:

We command you, and every of you, that you appear before the Judges of our District Court of the United States of America, for the Eastern District of North Carolina, at the office of the Clerk of said Court, in the City of Raleigh, in said District, on the 7th day of November, next, to answer the Bill of Complaint of The Norfolk Southern Railroad Company, a citizen and resident of the State of Virginia, filed in the Clerk's office of said Court, in said City of Raleigh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of Judgment being pronounced against you by default.

To the Marshall of the Eastern District of North Carolina to Execute.

Witness, The Hon. Wm. Howard Taft, Chief Justice of the Supreme Court of the United States, at Raleigh, in said District, the 18th day of Oct., 1921, and in the 146th year of the Independence of the United States.

Issued the 18th day of Oct., 1921.

S. A. ASHE,
Clerk U. S. District Court.

The within-named defendants are notified that unless they enter their appearance in the Clerk's office of said District Court at Raleigh and file their answer, or other defense, on or before the 20th day after service hereof, excluding the day of service, the bill filed herein will be taken as confessed and a decree entered accordingly.

S. A. ASHE,
Clerk U. S. District Court.

44 *Marshal's Return on Same.*

Filed Oct. 24, 1921.

Received at Raleigh, October 19, 1921. Executed at Raleigh, October 19, 1921, by serving the within Subpœna and leaving copy with J. Bryan Grimes, J. S. Manning and Frank Nash.

GEO. H. BELLAMY,
U. S. Marshal,
(S.) Per B. H. MEADOWS,
Dep.

Marshal's Fee, $6.00.
Marshal's Cost, $—.

I certify that the within is entered and filed this day.
Oct. 24, 1921.
S. A. ASHE,
Clerk.

45 *Subpœna.*

Issued October 18, 1921.

UNITED STATES OF AMERICA,
Eastern District of North Carolina:

District Court, Fourth Circuit, at Raleigh.

The United States of America to Augustus D. Watts, Commissioner of Revenue for N. C., Raleigh, N. C.; Baxter Durham, State Auditor for North Car., Raleigh, N. C.; B. R. Lacy, State Treasurer for North Car.; Greeting:

We command you, and every of you, that you appear before the Judges of our District Court of the United States of America, for the Eastern District of North Carolina, at the office of the Clerk of said Court, in the City of Raleigh, in said District, on the 7th day of November, next to answer the bill of complaint of The Norfolk Southern Railroad Company, a citizen and resident of the State of Virginia, filed in the Clerk's office of said Court, in said City of Raleigh, then and there to receive and abide by such judgment and decree as shall then or thereafter be made upon pain of Judgment being pronounced against you by default.

To the Marshall of the Eastern District of North Carolina to execute.

Witness, The Hon. Wm. Howard Taft, Chief Justice of the Supreme Court of the United States, at Raleigh, in said District, the 18th day of Oct., 1921, and in the 146th year of the Independence of the United States.

Issued the 18th day of Oct., 1921.

S. A. ASHE,
Clerk U. S. District Court.

The within-named defendants are notified that unless they enter their appearance in the Clerk's office of said District Court at Raleigh and file their answer, or other defense, on or before the 20th day after service hereof, excluding the day of service, the bill filed herein will be taken as confessed and a decree entered accordingly.

S. A. ASHE,
Clerk U. S. District Court.

46 *Marshal's Return on Same.*

Filed Oct. 24, 1921.

Received at Raleigh, October 19, 1921. Executed at Raleigh, October 19, 1921 by serving the within Subpœna and leaving copy with A. D. Watts, Baxter Durham and B. R. Lacy.

GEO. H. BELLAMY,
U. S. Marshal,

(S.) Per B. H. MEADOWS,
Dep.

Marshal's Fee, $6.00.
Marshal's Cost, $—.

I certify that the within is entered and filed this day.

Oct. 24, 1921.

S. A. ASHE,
Clerk.

47 *Clerk's Notation on Subpœna to Defendants in Western District.*

Filed Oct. 24, 1921.

Executed Oct. 18, 1921, by sending by registered letter copy of Equity Subpœna and Order to Show Cause to all Sheriffs and Tax Collectors residents of the Western District of North Carolina, as mentioned in the Bill of Complaint.

S. A. ASHE,
Clerk,
By S. A. ASHE, JR.,
Chief Deputy Clerk.

I certify that the within is entered and filed this day.

Oct. 24, 1921.

S. A. ASHE,
Clerk.

48 *Clerk's Notation on Subpœna to Defendants in Eastern District.*

Filed Oct. 24, 1921.

Executed Oct. 19, 1921, by sending by registered letter copy of Equity Subpœna and Order to Show Cause to all Sheriffs and Tax Collectors residents of the Eastern District of North Carolina, as mentioned in the Bill of Complaint.

S. A. ASHE,
Clerk,
By S. A. ASHE, JR.,
Chief Deputy Clerk.

I certify that the within is entered and filed this day.

Oct. 24, 1921.

S. A. ASHE,
Clerk.

49 *Order Continuing Hearing.*

Filed Nov. 3, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS, Commissioner of Revenue of North Carolina, et als.

This cause coming on to be heard at Newbern on Monday, October 31, 1921, upon the application of complaint for an interlocutory injunction, as prayed for in the bill, and as set out in the order to show cause, it is now, on motion of complainant, and by consent of the defendants, ordered, adjudged, and decreed that the application and motion for the interlocutory injunction, as prayed for in the bill, and as set out in the notice, be continued to be heard in the court room of this court at Raleigh, North Carolina, on Monday November 21, 1921 at 10:00 o'clock A. M.

And it is further ordered, adjudged and decreed that no penalties shall be attached or sought to be imposed.

That this order of continuance is made without prejudice to either complainant or defendants and that the matter will be heard upon the original application in the same manner and to the same extent as if it had been heard at the time fixed in the original notice and

order to show cause, and before the Judges named in the order or such other Judges as may be authorized or provided by law.

This 31st day of October, 1921.

(S.) H. G. CONNOR,
U. S. District Judge.

50 *Motion to Dismiss.*

Filed Nov. 21, 1921.

In the District Court of the United States for the Western District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY

v.

A. D. WATTS, Individually and as Commissioner of Revenue, et als.

Motion.

Come now the defendants, A. D. Watts, and others names as defendants in the complaint filed in this suit, and move the Court to deny the motion for a preliminary injunction prayed for in the complaint and to dismiss this suit, because it is conceded in the complaint that the plaintiff owes and is liable to pay the defendants taxes on property situated within the State of North Carolina and in the several counties named in the complaint and in the several cities, towns and taxing districts named in the complaint, property of the value of $18,000.00, on which said property the plaintiff, as it appears in its said complaint, has not paid or tendered payment of the taxes due thereon.

(Signed) JAMES S. MANNING,
Solicitors for the Defendants.

(Signed) GEORGE H. BROWN,
(Signed) WM. P. BYNUM,
(Signed) LOCKE CRAIG,
(Signed) T. D. WARREN,
(Signed) S. S. ALDERMAN,
Of Counsel.

51 *Agreement for Hearing at Greensboro.*

Filed Nov. 21, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY, Complainant,

v.

A. D. WATTS, Commissioner of Revenue, et als.

Order.

This case coming on to be heard in Raleigh on Monday, November 21st, 1921, upon the application of complainant for an interlocutory injunction as prayed for in the bill and as set out in order to show cause, and the defendants having filed a motion to dismiss the bill, and it appearing further that the complainant and the defendants have entered into a stipulation, the original of which is filed in this court, it is, on motion of the complainant, by consent of the defendants, ordered, adjudges and decreed that the application and motion for the interlocutory injunction and the motion to dismiss the bill be continued to be heard in the court room of the United States District Court at Greensboro in the Western District of North Carolina at such time as the similar actions brought in the Western District of North Carolina by the Southern Railroad Company, the Atlantic & Yadkin Railroad Company, and the Atlantic Coast Line Railroad Company vs. A. D. Watts, et als., shall be heard, and pending said hearing the stipulation entered into by the complainant and the defendants and approved by the court will be effective.

H. G. CONNOR,
United States District Judge.

Seen and approved:

(Signed) W. B. RODMAN,
(Signed) W. B. RODMAN, JR.,
(Signed) JOHN M. ROBINSON,
Counsel for Complainant.
(Signed) JAMES S. MANNING,
Atty. Gen.;
(Signed) GEORGE H. BROWN,
(Signed) T. D. WARREN,
(Signed) W. P. BYNUM,
(Signed) LOCKE CRAIG,
(Signed) S. S. ALDERMAN,
Counsel for Defendants.

52 *Stipulation of Counsel and Interlocutory Order.*

Filed Nov. 25, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY

v.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et als.

Stipulation.

The following stipulation is entered into between counsel for plaintiff and the Attorney General of North Carolina and his associates as counsel for all defendants, for each of which defendants they have entered an appearance:

It is agreed that in order that the defendants may have sufficient time in which to prepare the defense, the application for an interlocutory injunction under Section 266 of the Judicial Code is, with the consent of Court, continued until such date as the Court may select following January 1, 1922.

The foregoing continuance being agreed upon and it appearing that before the hearing and determination of the application certain taxes will come due to the State of North Carolina and to the counties, cities, towns, and other taxing districts; therefore, it is agreed by the Attorney General of North Carolina and his associates as representing all of the defendants, that if the Norfolk Southern Railroad Company pays the taxes it agrees hereinafter to pay, then no further or other taxes sought to be enjoined in the bill will be demanded or collected or any action or suit of any character begun to collect or any penalty assessed for the non-payment thereof until the further order of the Court.

The Norfolk Southern Railroad Company agrees that it will pay when due in accordance with the laws of the State of North Carolina to all counties, cities or towns, special school districts, or other special taxing districts all taxes that may be due each county, city special school or other special taxing district of the State, on its proper proportionate share of an aggregate ad valorem assessment against plaintiff of eighteen million dollars.

The Attorney General of North Carolina agrees that he will take all necessary action to have the Commissioner of Revenue certify to the several counties and taxing districts of North Carolina their proper proportion of the assessment of eighteen million dollars as soon after the date hereof as may be practicable and, if possible, within such period as will enable the Railroad Company to take ad-

53 vantage of any discount that it may be entitled to under the law.

It is agreed between the parties that the Norfolk Southern Railroad Company is not to demand a receipt in full for its 1921 taxes in consideration of the payment it makes, but is to receive a receipt for the amount of the taxes paid, and the amount of taxes so paid shall be in full of said taxes due if an assessment shall be finally fixed at a sum not in excess of eighteen million dollars, or such payment shall be a credit upon all taxes that may be due if the assessment of plaintiff's property for ad valorem tax purposes for the year 1921 shall be finally fixed in excess of said eighteen million dollars.

It is further agreed that if defendants desire to file an answer prior to the hearing of the application for an interlocutory injunction they shall file such answer or any motion or other pleading they desire to file by December 10, 1921, and furnish opposing counsel with copies thereof. Plaintiff shall have until December 24, 1921, to file any motion or reply pleading and any affidavits in support of bill or motion for interlocutory injunction or in reply and furnish opposing counsel with copies thereof. Defendants shall have until January 10, 1922, to file affidavits in support of their answer or in reply and plaintiff shall have until hearing to file reply affidavits.

The motion made in this cause to dismiss, it is agreed be continued to the hearing on the application for preliminary injunction at Greensboro.

This stipulation to become effective and filed in this Court upon approval hereof by the Court.

At 21st day of November, 1921.

W. B. RODMAN,
JOHN M. ROBINSON,
W. B. RODMAN, JR.,
Counsel for Plaintiff.
JAMES S. MANNING,
Attorney General of North Carolina;
LOCKE CRAIG,
T. D. WARREN,
GEO. H. BROWN,
WM. P. BYNUM,
S. S. ALDERMAN,
Counsel for Defendants.

Approved November 21, 1921.

EDMUND WADDILL, JR.,
U. S. Circuit Judge.
H. G. CONNOR,
JAS. E. BOYD,
U. S. District Judges.

54 *Answer.*

Filed November 30, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et al.

Answer.

Come now A. D. Watts and the other defendants in the above-entitled suit and, answering the complaint filed by the plaintiff therein, say:

1. The allegations of article one are admitted.

2. The allegations of article two are admitted, except that defendants deny that they have knowledge or information sufficient to form a belief as to the allegations of the second paragraph of that article.

3. The allegations of article three are denied, except that it is admitted that this is a suit in equity, and that the amount in controversy, exclusive of interest and cost, exceeds the sum or value of three thousand dollars ($3,000).

4. The allegations of article four are admitted.

5. The allegations of article five are admitted.

6. The allegations of article six are admitted.

7. The allegations of article seven are admitted. The defendants aver, however, that in addition to the mileage of main line shown in the said article, the plaintiff has 159.65 miles of side track in North Carolina, and that the percentages of plaintiff's total mileage in North Carolina and in Virginia, stated in the said article, are based on mileage of main lines without consideration of side tracks.

55 8. The allegations of article eight are admitted, except the allegation that the assessment of the plaintiff's properties in North Carolina made by the State Tax Commission, at the sum of $27,023,462, was largely in excess of the actual value in money. The defendants aver that that valuation was made by the State Tax Commission for 1920 as of May 1, 1919; that after the appointment of the Commissioner of Revenue the plaintiff, June 21, 1921,

petitioned the said Commissioner to review this said assessment made by the State Tax Commission; that upon the hearing of that petition, and the evidence offered in its support, the Commissioner of Revenue was of the opinion, and in his discretion found, that the assessment made by the State Tax Commission was excessive and should be reduced, and he accordingly reduced the same to the sum of $22,840,932, which valuation was in accordance with and taken from one of the valuations placed upon its property by the plaintiff itself and submitted to the Commissioner of Revenue for his consideration. The action of the Commissioner gave to the plaintiff the benefit of a reduction of $4,182,530.

9. The allegations of article nine are admitted, except as to the name of the defendant Watts.

10. The allegations of article ten are admitted, except for the typographical error in referring to section 28 (*g*) of Chapter 38, as being Section 26 (*g*) of Chapter 28. The defendants aver, as hereinbefore alleged, that the said sum of $22,840,932 to which the plaintiff's assessment was reduced by the Commissioner of Revenue, was a figure submitted by the plaintiff itself and by it contended to be a correct valuation of its property in North Carolina for ad valorem taxation.

11. The allegations of artcie eleven are denied.

12. The allegations of article twelve are admitted. The defendants aver that the Commissioner of Revenue, after a consideration of all the evidence submitted to him and of the arguments made before him by the plaintiff at the time of the said petition to rehear, having no sufficient evidence before him to lead to a different conclusion, and having the acquiescence of the plaintiff in that
56 conclusion as correct, finally adopted the said sum of $26,028,366 as the basis upon which he should estimate the amount to which the assessment of the plaintiff's property in North Carolina for taxation should be by him reduced.

13. Answering the allegations of article thirteen the defendants deny that they have knowledge or information sufficient to form a belief as to whether the Interstate Commerce Commission has ever reported to the State of North Carolina the final value of the plaintiff's entire common carrier properties, as a going concern, as the term "value" was used in the Interstate Commerce Act, or as to when such report was made, if it has been made. The defendants aver, however, that no such final value was reported to the Commissioner of Revenue by the Interstate Commerce Commission or by any one else, and that at the time the plaintiff petitioned the Commissioner of Revenue for a review and reduction of its assessment for 1920, it submitted no such final value to the Commissioner nor was the same ever brought to his attention. The plaintiff did submit, however, of its own volition, the Interstate Commerce value referred to in article twelve of the complaint, and not only acquiesced in, but requested its adoption as the basis for the ascertainment of the ex-

tent to which the 1920 assessment should be reduced. The defendants aver that the validity of the valuation to which the 1920 assessment of the plaintiff's properties in North Carolina for ad valorem taxation was reduced by the Commissioner of Revenue at the plaintiff's request, with its acquiescence, and upon its own showing as to its valuation, can in no way be affected by any different valuation fixed by the Interstate Commerce Commission, and that the plaintiff cannot be heard in a court of equity to complain of a valuation thus fixed with its own consent, to which it took no exception and against which it made no complaint.

14. The defendants deny knowledge or information sufficient to form a belief as to the correctness of the figures set forth by the plaintiff in Exhibit B, as to the market value of its securities.
57 The defendants aver, however, that if these figures are accurate they represent only the temporary and fluctuating prices paid or offered on the market from day to day for the few offerings of such securities for sale on such days. As hereinafter stated in article twenty-three of this answer, such prices established by the offerings and purchases of a few of the plaintiff's securities from day to day in no way measure the price at which such securities would be sold if a purchase of the entire amount of plaintiff's outstanding securities should be attempted. It is denied that the said prices quoted by the plaintiff in its Exhibit B represent or measure the sale value of the plaintiff's entire properties, owned and leased, as such property is sold in the open market, not at forced sale. It is denied that a sale of the total outstanding securities of the plaintiff would constitute a sale of its entire properties or that the ownership of such properties would in any way be changed by such transfer of securities. It is denied that $17,717,000 is the average sale value of the plaintiff's entire properties for any years whatsoever, or that such entire properties could ever have been purchased or can now be purchased for that amount.

15. The defendants deny that they have knowledge or information sufficient to form a belief as to the allegations of paragraph one of article fifteen. They aver, however, that the percentages of plaintiff's properties allocated respectively to Virginia and North Carolina by the Interstate Commerce Commission have no binding effect upon the defendants or upon the State of North Carolina in the assessment and levy of taxes upon the property of the plaintiff in North Carolina. The statutes of North Carolina provide for the ascertainment of the proportion of the plaintiff's property in that State by the use of a main line mileage proportion. The correct main line mileage proportion is alleged by the plaintiff, 12.246 per cent for Virginia and 87.754 per cent for North Carolina. Those proportions were used in fixing the valuation to which the 1920 assessment of plaintiff's property was reduced by the Com-
58 missioner of Revenue, and the final valuation as it stands for 1921 was determined by the application of the said main line proportion to the valuation which the plaintiff itself submitted

to the commissioner of Revenue as being the valuation of its entire properties. The defendants aver that there are elements of property value of the plaintiff in North Carolina, and taxable in that State, which were not taken into consideration by the Interstate Commerce Commission in determining the valuation it placed upon the property of the plaintiff and of the proportions in which it allocated such valuation to Virginia and North Carolina.

16. The defendants admit that the calculations appearing in article sixteen are mathematically accurate, but deny that they have any application to the proper assessment of the plaintiff's property in North Carolina for ad valorem taxation except as hereinbefore stated.

17. The defendants admit the allegations of article seventeen and they aver that, as alleged by the plaintiff in the said article, the valuation of the plaintiff's properties and the allocation thereof to North Carolina were made as required by the provisions of Chapter 38, Public Laws 1921. The defendants further aver that the only authority which the Commissioner of Revenue had in the premises under the laws of North Carolina was to review the assessment for 1920 made by the State Tax Commission, and in the exercise of that authority he did reduce the said 1920 assessment as hereinbefore alleged.

18. The allegations of the first paragraph of article eighteen are admitted, except that before the Commissioner of Revenue certified to the various counties cities, towns, and local tax districts where plaintiff's property is located, their respective part of the value to which he reduced the 1920 assessment of plaintiff's property in North Carolna as hereinbefore stated, he deducted from the said total value in North Carolina of $22,840,932 the value of property of the plaintiff lying off the right of way and assessed by local assessors, and it was only the difference between the said total assessment of
59 $22,840,932 and the said property locally assessed which he thus apportioned and certified to the localities through which the plaintiff's lines run. It is denied that he assessed the value of plaintiff's properties as alleged in that article; he only exercised the right given him by statute to reduce the assessment which the State Tax Commission had made for 1920.

The defendants deny that they have knowledge or information sufficient to form a belief as to the allegations of the second paragraph of article eighteen.

19. The defendants deny the allegations of article nineteen. Further answering they aver that there was no discrimination against the plaintiff and no disproportion in the values fixed upon the plaintiff's property for taxation in North Carolina and upon other property in that State.

As to the allegations of paragraph two of the said article nineteen, the defendants further aver that the plaintiff has no standing in this court to contest the validity and legality of local levies under the Constitution and laws of North Carolina as it has a plain and adequate

remedy at law under Section 7979, Consolidated Statutes of North Carolina against any excessive or illegal rates of taxation by localities. As to the valuation of the plaintiff's property in North Carolina apportioned by the Commissioner of Revenue to the localities in the State and the proportions thereof certified to each such locality, it is denied that there is any illegality or excess as hereinbefore stated.

20. The defendants deny that they have knowledge or information sufficient to form a belief as to the truth and accuracy of the contents of Exhibit C which the plaintiff attaches to the complaint. They aver, however, that these matters were submitted to the Commissioner of Revenue for his consideration upon the plaintiff's application to him to review its 1920 assessment; he gave all these matters due consideration; and upon all the evidence adduced by the plaintiff, upon the arguments made by it, and with its consent, he fixed the valuation to which the said 1920 assessment should be reduced, as hereinbefore alleged.

60 21. The defendants admit the allegations of article twenty-one, except that the inclusion of the franchise therein referred to was only the inclusion of franchise in the sense of intangible property value, and except that the assessment to be made by the State Auditor of a franchise or privilege tax against the plaintiff is made under Section 82 (6½), instead of under Section 82 of Chapter 34, Public Laws 1921 (Revenue Act).

22. The allegations of article twenty-two are denied as therein stated. The defendants aver that the provision of the Constitution of North Carolina is that laws shall be passed taxing the plaintiff's property, among other, according to its true value in money. The Constitution did not require and does not require that the Commissioner of Revenue make any assessment whatsoever. The laws of North Carolina neither require or authorize the Commissioner of Revenue to make any assessment until the year 1924. It is denied that the Machinery Act of 1921 contains a definition of the expression "true value in money" used in the Constitution, and it is denied that the definition of "actual value in money" contained therein applies to any property other than that which is usually sold.

23. Answering the allegations of article twenty-three, the defendants say that it may be true that railroad property is not usually sold as a whole, as alleged by the plaintiff; but they deny that the property of a railroad company is sold or transferred or its ownership changed by a sale of its stocks and bonds. The property is owned by the corporation. A sale of the entire stocks and bonds and other securities of the corporation would have no effect to transfer the title or ownership of the property from the corporation. A sale of the entire securities of such corporation would in no way constitute a transfer of the large intangible property values inhering in the right of that corporation to exist and to do business as such and other intangible values inhering in it, and many of such values and properties could not be sold or transferred at all by the railroad

61 corporation without the consent of the State. Assuming, therefore, that $17,717,000 is the average price at which the total outstanding securities of the plaintiff could be purchased on the market as alleged by the plaintiff, that sum in no way represents the sale price of the total properties of the plaintiff and is in no way the measure of the true value in money of such total properties. It is denied, however, that the total outstanding securities of the plaintiff could at any time have been bought for that price, as hereinbefore stated. The market price fixed on any day or days by the small number of offerings to sell or to buy a relatively small number of such securities in no way measures the price which would have to be paid on the market if an attempt should be made to purchase the total amount of such outstanding securities. The sale value of the total number of such securities cannot, therefore, be measured by the quoted market prices which are based on a very small number of transactions on the day of any one quotation and which would be vastly changed by an increase of the number of such transactions up to and attaining the number of the securities outstanding. It is denied that the Constitution of North Carolina requires that the plaintiff's property in North Carolina be assessed for taxation on the basis of the sale value of the plaintiff's and its lessor companies' stocks and bonds allocated to North Carolina on a mileage or percentage of cost of reproduction proportion, as alleged in the said article twenty-three. It is denied that the Commissioner of Revenue has made an assessment of the plaintiff's property for taxation or that he has any authority to make such assessment at any time prior to 1924 under the laws of this State. He merely exercised his statutory authority to review, upon the petition of the plaintiff, the assessment of the plaintiff's property made for 1920 by the State Tax Commission, and this he did upon the showing made to him by the plaintiff as hereinbefore alleged. The allegations of the last paragraph of article twenty-three are denied.

24. The allegations of article twenty-four are admitted.

25. The allegations of paragraph one of article twenty-five are admitted, except that the defendants have no knowledge or
62 information sufficient to form a belief as to what the plaintiff has filed with the Interstate Commerce Commission, and except that, in addition to the business which the plaintiff in that paragraph alleges it is engaged in, it is further engaged in a large and extensive business of intrastate commerce carried on wholly within the State of North Carolina, and its property in North Carolina is very largely devoted to such intrastate commerce within that State in addition to its interstate commerce. On information and belief the defendants deny the allegations of article twenty-five, second paragraph.

26. Answering the allegations of article twenty-six, the defendants deny that the Amended Interstate Commerce Act requires the plaintiff to carry on intrastate commerce wholly within the State of North Carolina, or that it has any effect to forbid or prevent the plaintiff

from ceasing or desisting from using its property in North Carolina for such intrastate commerce carried on wholly within that State, or that it has any application whatsoever to intrastate commerce wholly within the State.

27. The allegations of article twenty-seven are admitted, except that the inclusion of the franchises of the plaintiff and its lessors therein referred to was only the inclusion of their franchises in the sense of intangible property values.

28. The allegations of the first three paragraphs of article twenty-eight are admitted.

Answering the allegations of the last paragraph of the said article, the defendants aver that the privilege or license tax referred to therein is not for the privilege therein stated, but is for the privilege of carrying on the business of intrastate commerce, wholly within the State of North Carolina, for the privilege of exercising its franchise in this State as provided by the statute under which the said tax is levied.

29. The allegations of article twenty-nine are denied as therein stated. It is admitted that the said franchise or privilege tax is measured by a given per cent of the true and actual value of the entire property of the plaintiff in North Carolina as assessed for ad valorem taxation. As hereinbefore alleged, the franchise
63 or privilege tax imposed upon the plaintiff is for the privilege of exercising its franchise within this State, i. e., for the privilege of engaging in intrastate commerce entirely within this State. It is denied that it violates the Constitution of the United States, the Statutes of the United States, the Fourteenth Amendment to the said Constitution, or the Constitution of North Carolina. It is denied that it destroys the uniformity of taxation required by the said Constitution of North Carolina. The defendants aver that the said tax is valid and legal and is justly due to the State of North Carolina.

30. The allegations of article thirty are denied, except that it is admitted that the said tax, if unpaid, will become a lien on the plaintiff's property, prior to all other liens, and displace pro tanto all prior liens, and that the said lien is valid and will be a lien prior to the lease of the plaintiff's lessors to it, and will, unless the plaintiff pays the said taxes, be grounds for the avoidance of the said leases by the lessors. The defendants aver that not only did the plaintiff have the right under the laws of North Carolina to pay the said taxes and to sue for their recovery, if deemed illegal, but that was the proper procedure which the plaintiff should have pursued, that that procedure constituted an adequate remedy at law, and that no grounds exist for equity jurisdiction in this suit. The defendants further aver that the provisions of Section 82, Chapter 34, Public Laws of 1921, referred to in the said article of the complaint, have no application to corporations carrying on the business of common carriers, and have no application to the plaintiff or its lessors. Such

corporations and the plaintiff are not required to file with the Secretary of State or other officer of North Carolina any authority to do business within the State, and the said statute gives to the Secretary of State no authority to cancel the plaintiff's right to do in North Carolina the business of an interstate carrier in interstate commerce.

31. Answering the allegations of article thirty-one, the defendants deny that the said Section 82 (3½) of the Revenue Act has
64 any application to railroads or to the franchise or privilege taxes on railroads; it is a section which was enacted in 1920, and was specifically limited in its application to taxes on corporations as levied in Section 82 of the Revenue Act of 1919; railroads and the franchise taxes thereon were not included in any part of the said Section 82 of the Revenue Act of 1919; when Section 82 (6½) was inserted in that section in 1920, thus shifting the provision for franchise tax on railroads to this position as a sub-section of the said Section 82 from its former position as Sections 77 and 78 of the said statute, it was not intended to make the said Section 82 (3½) applicable to the said Section 82 (6½); the said Section 82 (3½) does not apply and never has applied to railroads or taxes on railroads, and has no application to the franchise or privilege tax on the plaintiff. It is denied that the figures of $14,040,640 or $13,120,000 or any other figure than that of $22,840,932 is the proper one upon which to base the calculation of the franchise or privilege tax which the plaintiff is due to the State of North Carolina. It is denied that the provisions of Section 82, Chapter 34, Public Laws 1921, make or undertake to make an arbitrary classification among or against corporations. The defendants aver that the placing of railroad corporations in one class and of other corporations in another class, the imposition of a franchise or privilege tax based on the total properties in the State of corporations of the first class, and the imposition of such a tax based on capital stock under the provisions of the said Section 82 upon corporations of the second class, is a reasonable, legitimate, and perfectly justifiable classification, and in no way violates the uniformity provision of the Constitution of North Carolina, and in no way denies to the plaintiff and its lessors the equal protection of the laws, or undertakes to deprive them of their property without due process of law, or violates the Fourteenth Amendment to the Constitution of the United States.

32. The allegations of article thirty-two are denied.

33. The allegations of article thirty-three are denied, ex-
65 cept that it is admitted that the said tax, if not paid, will become a lien upon the plaintiff's property prior to all other liens, and displace pro tanto all prior liens.

Prayer.

Wherefore, the defendants, having fully answered the said complaint filed by the plaintiff in this suit, pray the court that every and singular the prayers of the said complaint be denied and that the same be dismissed at the costs of the plaintiff.

JAMES S. MANNING,
Attorney-General;
FRANK NASH,
Ass't Attorney-General,
Solicitors for the Defendants.

WILLIAM P. BYNUM,
GEORGE H. BROWN,
LOCKE CRAIG,
THOMAS D. WARREN,
SIDNEY S. ALDERMAN,
Of Counsel.

66 A. D. Watts, being duly sworn, says that he is one of the defendants in the above-entitled suit; that he has read the foregoing answer to the complaint, and that it is true of his own knowledge, except as to matters therein stated on information and belief, and as to them he believes it to be true.

A. D. WATTS.

Sworn to and subscribed before me this 30th day of November, 1921.

W. P. STACY,
Associate Justice N. C. Supreme Court.

EXHIBIT "A."

Comparative Statement of Taxable Values for the Years 1919 *and* 1920, *Showing Number of Acres of Land, Value of Timber, Manufacturing, Mineral, and Quarry Properties, Average Value per Acre, Value of Town Lots, Value of Real Estate, Value of Personal Property, and the Aggregate Value of Real and Personal Property Listed with County Supervisors.*

(NOTE.—This statement does not include railroad and public service corporations, banks, and corporate excess assessed by the State Tax Commission.)

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Alamance, 1919.....	257,742	$2,786,845	$10.81	$2,058,055	$6,844,638	$5,532,968	$11,377,606
Alamance, 1920.....	262,836	9,966,036	37.92	7,159,464	24,934,832	10,537,710	35,472,542
Alexander, 1919.....	157,970	1,283,419	8.12	194,050	1,667,975	1,615,101	3,283,076
Alexander, 1920.....	165,761	4,864,885	29.30	681,423	6,527,000	1,956,886	8,483,886
Alleghany, 1919.....	143,300	957,833	6.68	28,343	996,054	940,622	1,936,676
Alleghany, 1920.....	147,001	5,383,189	36.62	83,210	5,383,189	1,465,520	6,848,709
Anson, 1919.....	328,634	2,663,408	8.11	964,020	4,379,115	3,781,961	8,161,076
Anson, 1920.....	329,715	10,529,114	31.93	2,855,697	13,384,811	6,831,284	20,216,095
Ashe, 1919.....	268,508	2,094,573	7.80	73,833	2,172,551	2,555,766	4,728,317
Ashe, 1920.....	272,678	12,360,480	45.33	322,432	12,731,463	3,917,513	16,648,976
Avery, 1919.....	113,053	1,059,508	9.37	128,961	1,571,789	672,046	2,243,835
Avery, 1920.....	130,932	3,863,827	29.51	308,197	4,793,754	1,133,928	5,927,682
Beaufort, 1919.....	379,913	3,422,611	9.00	2,534,192	6,365,173	4,231,976	10,597,149
Beaufort, 1920.....	396,759	24,325,213	61.31	4,238,253	29,207,006	8,462,799	37,669,805
Bertie, 1919.....	450,883	3,040,339	6.74	862,130	4,055,859	3,467,887	7,523,746
Bertie, 1920.....	400,557	9,629,044	24.00	2,259,976	13,958,782	5,301,677	19,260,459
Bladen, 1919.....	502,723	2,655,945	5.28	287,732	3,545,259	2,250,967	5,796,226
Bladen, 1920.....	524,585	10,092,335	19.24	794,790	11,630,040	3,418,325	15,048,365
Brunswick, 1919.....	476,230	2,406,552	5.05	490,048	2,896,600	1,640,498	4,537,098
Brunswick, 1920.....	502,593	5,477,845	10.90	970,035	7,953,027	2,017,305	9,970,332
Buncombe, 1919.....	312,643	6,664,587	21.32	13,484,771	21,862,308	9,232,489	31,094,797

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Buncombe, 1920.....	.....	.....	....	.....	60,319,591	17,442,518	77,762,109
Burke, 1919.....	297,084	2,445,419	8.23	883,211	3,651,492	2,318,258	5,969,750
Burke, 1920.....	316,304	7,164,477	22.65	1,932,615	11,047,772	4,793,304	15,841,076
Cabarrus, 1919.....	208,079	2,213,175	10.64	1,734,076	6,729,195	5,406,793	12,135,988
Cabarrus, 1920.....	222,036	9,964,995	44.88	6,185,440	30,211,743	15,069,837	45,281,580
Caldwell, 1919.....	227,055	1,809,693	7.97	669,221	3,502,721	2,142,059	5,644,780
Caldwell, 1920.....	258,296	7,792,632	30.17	2,896,422	13,257,242	4,458,020	17,715,262
Camden, 1919.....	145,857	1,083,289	7.42	58,607	1,288,061	672,329	1,960,390
Camden, 1920.....	149,262	3,587,989	24.04	121,547	3,736,356	846,591	4,582,947
Carteret, 1919.....	239,554	1,703,631	7.11	1,056,084	2,993,060	1,586,379	4,579,439
Carteret, 1920.....	233,162	7,972,149	34.19	1,650,790	10,405,339	2,940,095	13,345,434
Caswell, 1919.....	262,748	1,686,517	6.42	116,680	1,803,197	2,188,466	3,991,663
Caswell, 1920.....	268,746	8,743,808	32.54	309,340	9,053,148	2,920,697	11,973,845
Catawba, 1919.....	256,932	2,460,000	9.58	1,604,830	4,692,916	5,370,515	10,063,431
Catawba, 1920.....	254,423	12,339,008	48.50	7,735,670	26,677,188	9,357,453	36,034,641
Chatham, 1919.....	404,913	3,063,242	7.04	504,565	4,082,437	3,551,644	7,644,081
Chatham, 1920.....	435,773	10,063,328	23.09	1,243,459	11,813,037	4,594,017	16,407,054
Cherokee, 1919.....	273,738	2,115,327	7.42	717,719	2,833,046	1,690,555	4,523,601
Cherokee, 1920.....	303,762	3,045,638	10.03	871,876	4,264,124	2,331,748	6,595,872
Chowan, 1919.....	99,967	1,159,788	11.60	582,677	2,007,621	1,778,608	3,786,229
Chowan, 1920.....	110,499	4,410,953	39.92	2,412,177	6,823,130	3,594,041	10,417,171
Clay, 1919.....	126,778	743,216	5.86	22,361	808,427	425,462	1,233,889
Clay, 1920.....	170,813	2,106,635	12.33	47,580	2,154,215	693,421	2,847,636
Cleveland, 1919.....	278,395	3,827,884	13.75	1,520,971	7,574,843	4,909,563	12,484,406
Cleveland, 1920.....	277,843	16,422,057	59.11	4,554,698	28,158,726	11,168,356	39,327,082
Columbus, 1919.....	458,631	3,429,666	7.48	822,207	4,922,220	4,061,355	8,983,575
Columbus, 1920.....	.....	.....	....	.....	15,789,229	6,600,000	22,389,229
Craven, 1919.....	364,212	2,421,364	6.65	4,354,543	7,617,226	4,097,447	11,714,673

Craven, 1920	323,112	15,488,629	47.94	13,256,829	28,745,458	9,352,424	38,097,882
Cumberland, 1919	338,497	3,116,070	9.21	2,513,375	6,348,011	4,990,251	11,338,262
Cumberland, 1920	358,317	12,835,535	35.82	7,393,804	20,522,039	7,567,734	28,089,773
Currituck, 1919	148,426	1,513,584	10.20	.....	1,733,291	705,677	2,438,968
Currituck, 1920	125,080	4,541,124	36.30	.....	4,541,124	1,033,871	5,574,995
Dare, 1919	208,400	494,859	2.37	100,929	626,963	301,642	928,605
Dare, 1920	.....	.....	....	.....	2,282,743	593,808	2,876,551
Davidson, 1919	35,442	.....	....	.....	6,957,305	3,806,554	10,763,859
Davidson, 1920	355,066	15,295,793	....	6,611,775	30,638,102	9,691,903	40,330,005
Davie, 1919	160,640	1,529,050	9.52	358,529	2,294,469	3,043,548	5,338,017
Davie, 1920	162,798	7,224,899	44.00	2,753,491	9,978,390	3,939,443	13,917,833
Duplin, 1919	449,760	3,689,316	8.20	850,138	4,723,287	4,976,607	9,699,894
68 Duplin, 1920	457,279	23,071,185	50.45	1,100,364	24,211,549	7,285,518	31,497,067
Durham, 1919	178,534	3,569,232	19.99	8,021,399	14,777,121	20,808,813	35,585,934
Durham, 1920	182,608	9,530,019	52.19	19,560,602	43,426,847	66,651,182	110,078,029
Edgecombe, 1919	303,562	4,131,420	13.60	3,036,247	7,867,565	7,415,180	15,282,745
Edgecombe, 1920	309,497	24,897,646	80.44	10,054,910	34,955,056	10,256,906	45,211,962
Forsyth, 1919	230,690	2,871,776	12.45	9,546,925	14,234,803	22,223,137	36,457,990
Forsyth, 1920	237,190	13,961,294	58.86	21,757,422	72,197,173	64,402,548	136,599,721
Franklin, 1919	303,215	3,082,712	10.16	1,482,479	4,607,194	4,565,486	9,172,680
Franklin, 1920	301,008	14,667,266	48.73	1,927,314	16,594,580	6,167,700	22,762,367
Gaston, 1919	201,263	2,648,515	13.16	2,807,246	11,302,506	8,192,666	19,495,172
Gaston, 1920	211,528	14,233,409	67.29	11,767,733	52,344,289	22,745,959	75,090,248
Gates, 1919	196,651	1,830,440	9.31	136,799	1,986,648	1,433,647	3,420,295
Gates, 1920	158,145	5,250,857	33.20	326,225	5,631,242	1,663,562	7,294,894
Graham, 1919	177,414	984,505	5.55	28,350	2,132,988	599,954	2,732,942
Graham, 1920	195,803	2,106,480	10.76	46,350	4,869,736	1,337,240	6,206,976
Granville, 1919	319,516	2,839,542	8.88	1,267,086	4,324,621	4,571,084	8,895,705
Granville, 1920	334,774	9,515,391	38.20	3,463,640	16,088,145	6,775,885	22,864,030
Greene, 1919	159,369	1,946,611	12.21	295,283	2,250,882	3,391,246	5,642,128
Greene, 1920	159,276	13,358,939	83.87	984,687	14,343,626	5,666,466	20,010,092
Guilford, 1919	393,239	6,646,810	16.90	9,183,654	18,884,912	12,058,586	30,943,498
Guilford, 1920	394,318	20,889,651	52.98	22,906,580	85,158,132	30,894,441	116,052,573
Halifax, 1919	409,577	4,404,845	10.75	2,349,656	8,675,643	10,385,714	19,061,357
Halifax, 1920	425,386	16,359,967	38.22	6,436,375	35,636,872	12,536,587	48,173,459
Harnett, 1919	353,154	3,077,468	8.65	740,537	4,742,889	5,425,881	10,168,771

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Harnett, 1920.....	346,418	14,418,178	41.62	3,514,044	20,823,234	8,165,342	28,988,576
Haywood, 1919.....	321,154	3,037,607	9.45	1,779,507	6,120,975	2,762,717	8,883,692
Haywood, 1920.....	343,881	10,960,771	31.87	4,024,593	17,326,364	6,080,935	23,407,299
Henderson, 1919.....	199,895	2,150,723	10.86	1,862,495	4,173,152	1,881,099	6,054,251
Henderson, 1920.....	195,716	4,689,786	23.00	3,796,873	11,322,157	3,101,037	14,423,194
Hertford, 1919.....	204,576	2,118,831	10.36	629,451	2,840,986	3,090,703	5,931,869
Hertford, 1920.....	201,537	8,738,122	43.36	1,991,046	10,747,168	3,609,665	14,356,833
Hoke, 1919.....	224,703	2,129,757	9.48	300,364	2,653,091	2,020,935	4,674,026
Hoke, 1920.....	221,230	9,967,450	45.05	944,313	11,244,263	2,995,910	14,240,173
Hyde, 1919.....	275,961	1,540,190	5.58	40,230	1,619,250	1,071,108	2,690,358
Hyde, 1920.....	420,604	11,837,110	28.14	443,911	12,281,021	2,035,801	14,316,822
Iredell, 1919.....	363,920	3,754,812	10.32	2,726,620	7,376,308	6,785,263	14,161,571
Iredell, 1920.....	364,507	15,358,713	42.63	6,728,014	26,500,459	10,117,767	36,618,226
Jackson, 1919.....	291,748	1,555,849	5.33	188,013	2,168,624	1,993,645	4,162,269
Jackson, 1920.....	319,180	6,068,768	19.01	222,843	6,608,611	3,149,193	9,757,804
Johnston, 1919.....	481,735	5,092,429	10.57	1,973,354	7,912,383	10,322,128	18,234,511
Johnston, 1920.....	498,946	32,620,897	65.38	7,092,072	42,030,148	15,477,315	57,507,463
Jones, 1919.....	291,477	1,666,958	5.72	280,788	1,969,921	1,378,496	3,348,417
Jones, 1920.....	294,634	7,585,777	25.75	712,063	8,447,840	2,255,143	10,702,983
Lee, 1919.....	155,733	1,467,390	9.42	926,313	2,735,378	2,144,202	4,679,580
Lee, 1920.....	163,139	6,712,698	41.15	1,019,819	8,706,469	3,371,944	12,078,413
Lenoir, 1919.....	222,375	2,205,289	9.92	2,329,826	4,859,933	5,518,123	10,378,056
Lenoir, 1920.....	239,868	20,753,505	86.52	11,629,585	33,857,010	10,910,400	44,767,410
Lincoln, 1919.....	179,225	2,119,185	11.82	586,071	3,446,982	4,256,437	7,703,419
Lincoln, 1920.....	193,391	7,504,532	38.80	2,009,709	12,584,088	5,417,219	18,001,307
Macon, 1919.....	260,925	1,490,137	5.71	406,713	2,006,353	1,293,125	3,299,478
Macon, 1920.....	275,716	5,011,838	18.18	189,631	5,201,469	1,330,869	6,532,338
Madison, 1919.....	262,922	2,108,634	8.02	392,267	3,241,392	2,617,167	5,858,559

Madison, 1920	278,983	7,576,333	27.16	791,445	8,367,778	2,775,922	11,143,700
Martin, 1919	267,953	2,956,812	11.13	941,390	4,116,229	4,768,842	8,885,071
Martin, 1920	287,276	12,848,746	44.72	2,699,065	15,613,311	6,799,760	22,413,071
McDowell, 1919	254,751	.....	....	.....	2,675,983	1,042,136	3,718,119
McDowell, 1920	241,210	2,814,834	11.67	1,540,961	8,139,746	3,861,589	12,001,335
Mecklenburg, 1919	313,806	4,032,705	12.85	13,112,770	23,133,825	15,082,064	38,217,889
Mecklenburg, 1920	314,277	14,423,868	67.31	56,054,830	93,500,878	33,585,655	127,086,533
Mitchell, 1919	128,935	718,301	5.57	76,756	795,057	650,049	1,445,106
Mitchell, 1920	138,372	4,027,771	29.11	278,203	4,340,208	1,133,117	5,473,325
Montgomery, 1919	288,986	1.766,532	6.11	629,642	2,858,839	2,478,702	5,337,541
Montgomery, 1920	289,109	5,090,834	17.60	1,738,731	6,830,165	3,091,370	9,921,535
Moore, 1919	415,165	3,178,355	7.65	1,871,452	5,434,221	3,005,237	8,439,458
Moore, 1920	401,486	8,004,405	19.93	5,240,261	15,604,749	5,224,372	20,829,121
Nash, 1919	335,415	3,878,799	11.50	3,219,117	7,865,680	8,391,768	16,257,448
Nash, 1920	323,886	20,867,100	67.82	9,818,482	36,300,096	12,130,528	48,430,624
New Hanover, 1919	92,962	2,100,440	22.59	10,087,280	14,941,453	5,406,709	20,348,162
New Hanover, 1920	114,132	3,171,311	28.05	14,309,005	37,517,377	12,528,021	50,045,398
Northampton, 1919	318,278	3,705,130	11.64	623,790	4,463,235	4,436,914	8,900,149
Northampton, 1920	331,152	11,257,234	33.99	1,110,300	12,367,534	4,772,232	17,139,766
Onslow, 1919	342,132	2,846,648	8.32	489,741	4,772,360	2,651,357	7,423,717
Onslow, 1920	416,808	7,308,697	20.69	992,565	10,807,997	2,756,647	13,564,644
Orange, 1919	241,018	1,951,875	7.78	1,051,230	3,916,209	3,078,757	6,994,966
Orange, 1920	244,404	7,866,281	32.19	2,219,764	10,086,045	6,222,234	16,308,279
69 Pamlico, 1919	197,344	1,291,248	6.51	217,596	1,519,204	832,713	2,351,917
Pamlico, 1920	190,034	4,008,264	21.09	457,130	5,546,213	1,410,210	6,956,423
Pasquotank, 1919	148,427	1,678,547	11.31	2,136,000	4,120,322	2,922,259	7,042,581
Pasquotank, 1920	137,882	5,016,537	33.04	2,984,095	13,421,447	5,980,231	19,401,678
Pender, 1919	309,026	1,801,116	5.83	241,571	2,219,798	1,616,117	3,835,915
Pender, 1920	451,802	7,307,962	16.17	633,713	8,492,798	2,019,023	10,511,821
Perquimans, 1919	151,630	1,431,991	9.44	473,929	2,009,068	1,684,783	3,693,851
Perquimans, 1920	135,126	4,579,632	33.89	1,035,330	5,739,609	2,359,005	8,098,714
Person, 1919	248,726	1,907,348	7.67	491,389	2,633,069	2,368,806	5,001,875
Person, 1920	254,630	10,097,690	39.65	1,751,638	12,452,278	3,624,517	16,076,795
Pitt, 1919	377,008	4,386,655	11.64	2,896,842	7,464,487	8,655,875	16,120,362
Pitt, 1920	395,113	33,378,935	87.54	10,810,632	44,254,598	17,617,391	61,871,989
Polk, 1919	131,161	1,031,414	7.86	630,604	1,662,018	759,328	2,421,346
Polk, 1920	130,925	3,221,221	24.61	403,878	5,043,541	3,691,363	8,734,904

Comparative Statement of Taxable Values for the Years 1919 *and* 1920—Continued.

Counties.	No. acres land.	Value of land, timber manufacturing properties, mineral and quarry.	Average value per acre.	Value of town lots.	Total value of real estate.	Total value of personal property.	Aggregate value of real and personal property.
Randolph, 1919	450,446	3,426,965	7.61	1,189,826	5,390,639	4,514,894	9,905,333
Randolph, 1920	489,717	13,352,406	27.27	2,842,531	18,468,305	7,049,532	25,517,837
Richmond, 1919	271,037	1,733,510	6.39	1,610,266	5,067,210	3,581,552	8,648,762
Richmond, 1920	298,155	8,335,941	28.63	5,335,137	18,450,390	8,000,022	26,450,412
Robeson, 1919	508,290	5,661,400	11.14	2,326,580	9,063,675	8,063,294	17,126,969
Robeson, 1920	544,258	41,507,181	76.23	3,410,336	48,024,939	16,401,672	64,426,611
Rockingham, 1919	345,078	3,213,287	9.08	2,215,162	8,399,673	7,917,904	16,317,477
Rockingham, 1920	354,743	20,502,620	57.79	17,139,898	47,813,378	24,561,986	72,375,364
Rowan, 1919	315,694	3,506,437	11.11	4,975,488	9,727,065	6,753,857	16,480,922
Rowan, 1920	319,701	14,383,945	46.00	14,703,488	38,548,806	8,802,070	47,350,876
Rutherford, 1919	323,305	2,660,608	8.23	635,344	4,331,111	3,204,275	7,535,386
Rutherford, 1920	326,699	12,869,438	39.33	717,300	19,912,642	8,824,619	28,737,261
Sampson, 1919	530,046	3,850,395	7.26	678,681	4,539,778	4,864,205	9,403,983
Sampson, 1920	578,092	16,169,478	28.00	2,181,805	22,717,990	9,305,331	32,023,240
Scotland, 1919	190,468	2,194,402	11.52	708,682	3,661,138	2,732,179	6,393,317
Scotland, 1920	190,381	15,478,175	81.30	3,520,521	21,319,716	7,693,755	29,013,471
Stanly, 1919	228,929	1,794,885	7.84	1,109,296	4,727,603	3,983,469	8,711,172
Stanly, 1920	245,668	10,574,057	43.04	3,745,636	21,225,000	10,608,893	31,833,893
Stokes, 1919	274,915	2,364,379	8.60	212,216	2,618,965	3,512,301	6,131,266
Stokes, 1920	286,724	10,328,827	36.02	544,334	10,873,161	4,310,595	15,183,756
Surry, 1919	330,406	3,850,503	11.65	1,737,885	5,796,250	5,375,888	11,172,138
Surry, 1920	347,849	13,476,044	38.72	5,053,375	18,529,419	7,845,186	26,374,605
Swain, 1919	346,039	2,275,531	6.56	348,794	2,657,925	1,908,527	4,566,452
Swain, 1920	346,196	6,057,460	17.49	596,960	6,830,920	2,619,045	9,449,965
Transylvania, 1919	197,595	1,518,091	7.68	382,984	2,044,250	1,308,115	3,352,365
Transylvania, 1920	198,554	4,684,341	23.59	462,625	5,304,466	2,597,049	7,901,515
Tyrrell, 1919	192,927	974,680	5.05	117,342	1,105,114	645,502	1,750,616
Tyrrell, 1920	169,491	2,917,151	17.21	235,845	3,152,996	1,069,834	4,222,830

Union, 1919	389,203	2,975,210	7.65	1,714,833	5,092,979	6,205,125	11,298,104
Union, 1920	392,429	15,605,830	39.77	4,671,356	21,444,971	10,172,675	31,617,646
Vance, 1919	161,724	2,103,131	13.00	1,776,205	4,550,421	5,579,175	10,121,596
Vance, 1920	167,208	9,428,756	56.39	5,553,505	17,856,566	8,662,735	26,519,301
Wake, 1919	531,678	5,706,809	10.73	11,038,122	19,342,872	12,302,850	31,645,722
Wake, 1920	506,877	23,181,356	45.73	25,987,726	53,739,885	18,726,589	73,900,221
Warren, 1919	255,618	2,568,511	10.49	875,602	3,556,222	3,828,467	7,384,689
Warren, 1920	277,193	10,277,899	36.89	1,926,632	12,373,446	4,851,406	17,224,852
Washington, 1919	200,868	1,586,739	7.90	501,569	2,180,780	1,556,516	3,737,296
Washington, 1920	136,375	6,118,254	26.88	1,010,540	7,468,873	2,231,456	9,700,329
Watauga, 1919	207,881	1,632,998	7.85	140,420	1,773,418	1,938,899	3,712,317
Watauga, 1920	217,097	6,750,358	31.09	501,234	8,820,897	2,419,708	11,240,605
Wayne, 1919	340,735	3,771,064	11.07	4,026,567	8,449,151	9,173,853	17,623,004
Wayne, 1920	339,270	27,607,644	81.37	14,860,093	47,323,132	17,666,582	64,989,714
Wilkes, 1919	467,528	2,991,286	6.40	668,155	3,780,058	3,014,511	6,794,569
Wilkes, 1920	469,130	7,999,140	17.05	880,767	12,352,003	4,357,959	16,709,962
Wilson, 1919	223,631	2,866,661	12.82	3,109,243	6,323,509	9,005,000	15,328,509
Wilson, 1920	236,077	26,715,771	113.17	13,685,529	40,401,300	20,069,562	60,470,862
Yadkin, 1919	211,977	1,999,500	9.43	218,745	2,233,845	1,926,589	4,160,434
Yadkin, 1920	212,459	8,992,113	42.32	659,503	9,651,616	2,772,947	12,424,563
Yancey, 1919	174,935	1,142,880	6.53	83,079	1,335,074	1,204,819	2,539,893
Yancey, 1920	184,300	6,981,404	37.88	126,724	7,144,065	2,583,189	9,727,254

70 *Affidavit of F. L. Nicholson.*

Filed Dec. 23, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et al.

F. L. Nicholson, being first duly sworn, deposes and says, that he is Chief Engineer of Norfolk Southern Railroad Company, and as such is familiar with the grades of the line of railroad owned and operated by Norfolk Southern Railroad Company, and the character of its roadbed; that Exhibit "A" attached hereto shows the operating divisions of Norfolk Southern Railroad, its main line and branches, and the maximum and ruling grade on each division of said road and branches, as said grades existed on the first day of May, 1921.

That its main line from Norfolk to Plymouth is laid with 70 pound rail, from Plymouth to Washington is laid with 60 pound rail. There is some 60 pound rail between Washington and Raleigh; that the remainder of the rail between Washington and Charlotte is 70 and 80 pound rail; that all of the branch lines are laid with 60 pound rail or lighter. All of its side tracks are laid with 60 pounds or lighter.

That the maximum gross tonnage which can be hauled over its line West of Raleigh is 500 tons on a through train. That the maximum tonnage from Raleigh to Marsden is 1,000 gross tons, on a through train, Marsden being the station formerly known as Chocowinity. That in the main the roadbed is earth, with, in some places, a reasonable amount of cinder ballast, and some unwashed gravel, with a large percentage of sand, and some slag and cinders, and approximately 6 miles of rock ballast which is located on the Raleigh District; that is East of Raleigh. That the cost of maintenance of a dirt roadbed is quite expensive and as traffic increases expenses of maintenance increase.

That on Norfolk Southern Railroad there is about 15 miles of trestles; that the trestle across the Albemarle Sound is a little over five miles in length, is quite expensive to maintain and was quite costly to build.

That the weight of equipment which Norfolk Southern Railroad Company can with safety permit to be used on its line of railroad in hauling through trains is an engine of 90 tons, gross
71 weight. That with engines of this weight the tonnage which can be moved over the different divisions of its railroad, is as stated above. That before the tonnage which can be moved over its

railroad can be increased it will be necessary for it to increase the weight and carrying capacity of several of its bridges, which can only be done at quite a considerable cost. That before the hauling capacity of the engines of the type and weight now in use can be increased, it will be necessary to expend quite a large sum of money in reducing grades.

F. L. NICHOLSON.

Sworn and subscribed to before me this the 23d day of December, 1921.

[SEAL.]

J. R. PRITCHARD,
Notary Public.

My commission expires 10th day of January, 1925.

EXHIBIT "A."

Norfolk Southern Railroad System.

Maximum and Ruling Grades.

Operating division.	Southbound or westbound.		Northbound or eastbound.	
	Maximum grade.	Ruling grade.	Maximum grade.	Ruling grade.
Electric Division.				
Norfolk to Virginia Beach direct	0.42	0.28	0.41	0.41
Norfolk to Va. Beach via Cape Henry	0.60	0.28	0.75	0.70
Northern Division. Main Line.				
Norfolk to Chocowinity...	0.818	0.80	1.00	1.00
Branches.				
Norfolk to Munden.....	0.42	0.30	0.35	0.35
Euclid to Providence.....	0.10	0.10	0.07	0.07
Suffolk to Edenton.....	1.07	1.07	0.50	0.50
Beckford Jct. to Eliz. City.	0.23	0.17	0.51	0.51
Mackeys to Columbia....	0.29	0.29	0.29	0.29
Mackeys to Belhaven.....	0.49	0.49	0.48	0.48
Pinetown to Bishop Cross.	0.15	0.15	0.41	0.41
Central Division. Main Line.				
Chocowinity to Raleigh...	1.50	1.25	1.50	1.25
Chocowinity to Newbern..	0.62	0.60	0.50	0.50
Goldsboro to Morehead City	0.64	0.54	0.66	0.586

Operating division.	Southbound or westbound. Maximum grade.	Southbound or westbound. Ruling grade.	Northbound or eastbound. Maximum grade.	Northbound or eastbound. Ruling grade.
Branches.				
Newbern to Oriental.....	1.24	1.24	1.06	1.06
Morehead City to Beaufort.	0.40	0.40	0.58	0.58
Western Division.				
Main Line—Raleigh to Charlotte.				
Raleigh to Varina.....	2.71	2.3	2.75	2.29
Varina to Colon.....	1.00	1.00	1.00	1.00
Colon to Mt. Gilead.....	2.91	2.29	2.97	2.97
Mt. Gilead to Charlotte...	1.30	1.30	1.30	1.30
Branches.				
Varina to Fayetteville....	1.98	1.98	2.11	1.80
Aberdeen to Asheboro....	2.75	2.40	3.20	2.58
Candor to Ellerbe.....	2.33	1.80	2.03	1.88
West End to Jackson Spring	2.00	2.00	2.50	2.50
Carthage to Pinehurst....	2.62	2.62	2.57	2.50

72 *Affidavit of Charles M. Weeks.*

Filed Dec. 23rd, 1921.

STATE OF NORTH CAROLINA,
County of Beaufort:

Chas. M. Weeks, being first duly sworn, says that he is a resident of the County of Beaufort and has been a resident of such county for 15 years; that he is familiar with the abstracting of titles and familiar with the examination of deeds and records in the office of the Register of Deeds; that he has made an examination of all deeds recorded in Beaufort County from January 1, 1921, to June 30, 1921, both inclu*d*ive, in which the consideration appears to be more than $1,000.00, and also of the assessed value of real estate embraced in said deeds for the year 1921; that he has prepared a statement of all such conveyances and assessed values (except in some instances where it was impossible to ascertain how a particular piece of property has been assessed); that such statement shows the date of the conveyance, book and page where recorded, name of the first grantor, name of the first grantee, the consideration for the conveyance, and the assessed value of the said property for the year 1921; that when the considerations shown in such conveyances apparently were not the true considerations, then the true considerations were obtained as follows: By statements from grantor, or from the amount of the Federal Tax imposed and entered on the record, viz: when the con-

sideration or value of the interest in the property conveyed exclusive of the value of any lien or encumbrance thereon exceeds $100, and does not exceed $500, 50 cents, and for each additional $500 or fractional part thereof in exceess of $500, 50 cents, and to this was added the amount of any deferred payments secured by lien or other encumbrance; where the tract conveyed was assessed as a part of a larger tract, the statement shows, as nearly as can be estimated, the proportion of the total consideration so obtained for all deeds examined and contained in said statement amount to $555,540.00, and the total assessed values for taxation for the year 1921 of the properties embraced in said deeds contained in said statement amount to $393,592.00. Foreclosure sales are so noted excluding these tracts the totals are: Purchase price, $523,090.00, Assessed value, $363,-434.00.

The statement is hereto attached, marked "Exhibit A."

CHAS. M. WEEKS.

Sworn and subscribed to before me this the 16th day of December, 1921.

[SEAL.] ELBERT G. WESTON,

Deputy Clerk Superior Court, Beaufort County, N. C.

Bath Township.

Date of conveyance, month, day, 1921.	Where recorded, book, page.	Grantor.	Grantee.	Consideration paid in 1921.	Assessed value for 1921.
Jan. 14.	227-396	D. A. Taylor	Mary A. Tankard	$4,050	$2,640
Jan. 24.	227-511	Wash. B. L. Co.	Jno. T. Braddy	2,000	1,425 *a*
Jan. 24.	227-515	E. S. McGowan	J. M. Tandard	1,000	338
Jan. 24.	227-607	J. H. Wagner	C. M. Newby et al.	9,408	8,625
Apr. 28.	229-318	H. C. Carter, Jr.	J. A. Hackney	3,150 *b*	(not listed)
May 27.	230-26	W. H. Windley	J. M. Wood	2,600	1,175
May 30.	230-49	D. A. Dowty	Eureka Lbr. Co.	3,250	2,900
June 22.	230-288	J. A. Paul et al.	J. W. Hopkins	1,500	1,250

74

Washington Township.

Jan. 17.	227-427	L. H. Witherington	S. C. Bragaw	$6,000	$3,075
Jan. 19.	225-135	C. S. Doughty	R. H. Hudson	1,000	400
Jan. 20.	227-457	J. H. Bonner	C. H. Conaly	1,000	850
Jan. 24.	225-149	Thos. Jenkins	J. C. Crisp	1,000	1,500
Jan. 31.	225-159	R. J. Dillon	C. L. Carrow	2,500	1,650
Feb. 2.	225-166	J. C. Crisp	E. G. Lilly	6,000	3,750
Feb. 21.	228-173	Wash. B. L. Co.	J. H. Bonner	1,000	400
Feb. 28.	228-255	" " " "	J. G. Bragaw	5,000	2,925

a Consideration obtained from grantor.
b Listed in 1920 at $1,000. Should be listed in 1921 at $750 and included in the total valuation at these figures.

Feb. 28.	228-257	J. G. Bragaw, Jr.	Crowe et al.	2,000	1,875	
Feb. 25.	228-206	Bragaw et al.	Wash. B. L. Co.	3,500	4,390	
Mch. 1.	228-262	W. L. Vaughan, Tr.	J. T. Singleton	3,500	2,550	*a*
Mch. 22.	225-234	A. L. Crisp	W. A. Crisp	3,000	2,025	
Mch. 29.	225-239	F. Sawyer	J. D. Webb	1,560	1,370	
Apr. 7.	229-213	A. D. MacLean	M. U. Hodges	4,500	3,375	
May 19.	229-564	Wash. B. L. Co.	Bettie Lassiter	4,500	3,565	
May 21.	229-572	H. W. Carter	A. L. Bowers	2,000	1,125	
May 21.	230-35	S. B. Baugham	C. L. Carrow	2,600	2,250	
June 16.	230-226	L. J. Jones	Wash. B. L. Co.	1,000	600	
June 18.	225-319	W. W. Leggett	" " " "	1,500	1,902	

75

Long Acre Township.

Jan. 21.	227-472	J. B. Archebell	Wash. B. L. Co.	$9,000	$5,000	
Jan. 29.	225-154	J. H. Satchwell	C. M. Sheppard	4,250	3,000	
Jan. 31.	227-560	Hugh Paul	Earl Harrison	2,000	1,595	
Feb. 1.	227-595	G. Rumley	T. E. Smaw	2,000	1,500	
Feb. 8.	228-41	E. A. Daniel, Tr.	W. A. Blount, Jr.	1,000	525	*b*
Feb. 8.	228-40	" " " "	" " " "	1,800	1,690	*b*
Mch. 16.	228-455	Wash. B. L. Co.	Ernest Ward	3,000	1,710	
May 19.	229-550	J. T. Woolard	J. D. Webb	1,000	1,180	*b*
May 28.	230-51	J. A. Stubbs	Fred Beerman	1,000	1,200	
Apr. 30.	229-368	T. H. Braddy	B. T. Cox	2,100	1,260	*c*

a Purchased at foreclosure sale.
b Purchased at foreclosure mortgage.
c Consideration obtained from Washington Beaufort Land Co. sales agent.

EXHIBIT A—*Continued.*

Belhaven Township.

Date of conveyance, month, day, 1921.	Where recorded, book, page.	Grantor.	Grantee.	Consideration paid in 1921.	Assessed value for 1921.
Jan. 3.	225-110	T. F. Riddick	Lesofsky et al	$2,000	$1,275
Jan. 5.	227-284	J. L. Roper L. Co.	Poco, Guano Co.	11,000	3,700
Jan. 21.	225-151	M. Whitehurst	J. G. Tooly	2,000	1,800
Feb. 14.	225-183	J. G. Tooly	D. L. Starin	3,000	1,315
Feb. 16.	222-195	L. A. Cobb	G. A. Connor	2,000	1,200
Feb. 16.	225-193	G. A. Connor	Geo. Adler, Tr.	2,250	750
Apr. 4.	225-249	L. R. Cutler	Henry Tuten	1,500	565
Apr. 16.	225-263	J. F. Bishop	F. Snyder	5,000	3,750
Apr. 16.	225-264	F. Snyder	G. T. Kirk	12,000	9,750
Apr. 30.	229-424	R. & W. Graves	Jeo. Gilliam	1,200	600
June 11.	230-205	W. O. Lupton	S. W. Clark	4,100	2,625
June 14.	230-210	W. H. Bowen	C. McHarney	1,000	575

Chocowinity Township.

Jan. 22.	225-142	A. S. Cratch	R. T. Cratch	$1,000	$825
Mch. 16.	228-453	J. M. Saunders	H. Hudnell	2,500	2,436
Mch. 19.	228-504	Thad Hodges	Henry Sutton	5,500	4,100
Apr. 29.	229-325	H. C. Carter	Bragaw Fert. Co.	1,000	1,288 A
June 30.	230-344	W. C. Faucette	Wash. B. L. Co.	2,000	1,200

NB.—Lands have been sold which have not been listed for taxation. These lands are not included.

Richland Township.

Jan. 4.	225-111	J. S. Edwards	W. F. Edwards	$2,500	$938
Jan. 7.	225-120	W. T. Lamm	T. M. Arthur	1,300	1,118
Jan. 17.	225-128	J. G. Mayo	H. C. Mayo	1,500	563
Jan. 17.	227-491	J. G. Bragaw	W. T. Litvhfield	1,225	357
Jan. 21.	225-139	L. W. Spruill	G. S. Haddock	1,500	1,119
Jan. 21.	225-138	W. L. Spruill	L. W. Spruill	1,500	563
Jan. 24.	227-524	Wash. B. L. Co.	Geo. W. Clark	2,000	1,875
Feb. 4.	227-641	M. F. Bennett	Theo. Guilford	2,000	1,444
Feb. 19.	225-197	N. L. Simmons	J. W. V. Cordice	10,000	7,500
Feb. 19.	225-198	N. L. Simmons	W. H. Hooker et al	12,000	12,000
Mch. 1.	225-219	R. L. Brantley	Ida P. Brantley	2,500	758
Mch. 18.	228-474	E. A. Daniel, Tr.	B. B. N. Daniel	1,000	5,625 *a*
Apr. 2.	225-243	D. T. Herring	A. C. Austin	3,600	2,074
Jun. 1.	225-306	J. W. Mixon	H. D. Mixon	1,000	113
Jun. 1.	225-307	J. W. Mixon	H. D. Mixon	1,000	488

Pantego Township.

Jan. 7.	227-328	Wash. B. L. Co.	C. L. Carrow	$8,500	$6,000
Jan. 13.	227-369	H. W. Whedbee	J. A. Hackney	43,300	30,000
Feb. 2.	225-164	Wm. P. Brooks	P. D. Evans	1,500	850
Mch. 11.	228-364	Spencer Dev. Co.	F. W. McKinney	56,000	51,840
Mch. 11.	228-365	F. W. McKinney	W. D. Evans	67,000	53,340
Mch. 14.	228-423	Pant. & Bel. R. Co.	D. B. Wilkinson	1,597	1,500
Mch. 28.	225-235	C. Harris	J. B. Dunham	3,300	1,275
Apr. 28.	229-311	W. D. Morrison	J. A. Hackney	21,700	8,150

a Purchased at foreclosure sale.

City of Washington Township.

Date of conveyance, month, day, 1921.	Where recorded, book, page.	Grantor.	Grantee.	Consideration paid in 1921.	Assessed value for 1921.
Jan. 1.	225-108	J. H. Corey	E. O. Tripp	$5,500	$938
Jan. 5.	227-302	H. Windfield	Wash. B. L. Co.	2,800	2,625
Jan. 6.	227-97	Warren, Tr.	M. Knott	18,000	15,125 *a*
Jan. 11.	227-355	Wash. B. L. Co.	Stewart & Bryan	2,700	2,625
Jan. 21.	227-468	Etta C. Carter	J. D. Calais	3,000	2,250
Jan. 28.	227-542	Hassell Sup. Co.	Jankins et al.	30,000	17,005
Jan. 15.	228-91	L. Durand	J. D. Webb	1,500	815
Jan. 1.	227-596	Hassell Sup. Co.	E. G. Mallison	35,000	25,461
Jan. 17.	226-196	Wm. Bragaw	W. H. Lancaster	3,000	2,250
Jan. 23.	228-193	J. H. Clark	J. D. Calais	1,000	750
Apr. 19.	229-225	C. L. Carrow	Mary E. Elliott	4,200	2,500
May 2.	225-275	J. H. Ecklin	M. D. Hill	1,000	1,125
May 11.	229-467	C. G. Morris	E. J. Trickett	21,000	8,850
May 19.	229-559	J. L. Alden	Annie Sawyer	1,000	1,313
June 3.	230-102	Z. N. Leggett	E. Brayn	4,000	1,594
June 3.	230-104	Z. N. Leggett	E. Brayn	4,000	2,288
June 3.	230-106	Z. N. Leggett	W. L. Jones	4,000	1,594

a Purchased at foreclosure sale.

78 *Affidavit of J. C. Nelms, Jr.*

Filed Dec. 24, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS et al.

J. C. Nelms, Jr., being first duly sworn, deposes and says:

1. That he is now General Auditor of Norfolk Southern Railroad Company, complainant in this action, and has been such since April, 1915; that as such he has charge of the books of accounts of Norfolk Southern Railroad Company. That after United States Railroad Administration took control of the line of railroad owned and operated by Norfolk Southern Railroad Company under the Federal Control Act, he retained his position as General Auditor with the Company, except that he was Federal Auditor until November, 1918, when the Federal Administration directed the officers of railroad companies to be separated from those representing the Government.

From the records of the Company and the reports made by it to the Interstate Commerce Commission from time to time, as required by law, after the Government had taken possession and control of the lines of railroad of the country, in order that the amount of compensation for use of Norfolk Southern Railroad Company's property could be ascertained, in accordance with the terms of the Federal Control Act, he prepared or caused to be prepared in his office statement showing the amount of the average annual railway operating income of Norfolk Southern Railroad Company for the three years ended June 30, 1917, in the computation of such, income debits and credits arising from the accounts called in the monthly reports of the Interstate Commerce Commission, "equipment rents" and "joint facilities rents" were included. These reports were duly submitted to the Interstate Commerce Commission and by them checked and after making such corrections and changes as appeared to the Interstate Commerce Commission to be proper under the said Federal control act, the Interstate Commerce Commission certified to

79 the President that the average annual railway operating income of Norfolk Southern Railroad Company for the three years ended June 30, 1917, was $1,152,879.64, that the Interstate Commerce Commission certified to the President as proper compensation for the use of the lines of railroad operated by Norfolk Southern Railroad Company during the period of Federal control to be at the rate of $1,152,879.64 per annum. That the railway operating

income of Norfolk Southern Railroad Company from July 1, 1914, to June 30, 1917, and from January 1, 1918, to August 31, 1920, was at the rate of $274,814.75 per annum. That the railway operating income of Norfolk Southern Railroad Company for the six months ended December 31, 1917, was at the rate of $1,226,520.36 per annum. That in the above mentioned references to railway operating income, it is the railway operating income fixed by the Interstate Commerce Commission in accordance with the Federal Control Act and computed in that way.

That Norfolk Southern Railroad lines were operated by United States Railroad Administration from the first day of January, 1918, to the 29th day of February, 1920, both inclusive. That during that period the property was unable to earn, or failed to earn for the Government the amount paid as just compensation for the use thereof. From the first day of March, 1920, to the 31st day of August, 1920, both inclusive, said lines of railroad were operated by Norfolk Southern Railroad Company, and under the terms of the Transportation Act of 1920, that company having accepted the benefits and provisions of the guaranty contained in section 209 thereof. That the company operating under the terms of
80 said act was unable to earn the amount guaranteed to it by $1,311,700.63, and the Government, in settlement between it and the Norfolk Southern Railroad Company paid to Norfolk Southern Railroad Company the aforesaid sum as the amount necessary to make up the deficit from operation, and the amount guaranteed to it under the terms and provisions of section 209 of the Transportation Act of 1920.

That Norfolk Southern Railroad Company has been operating its line of railroad from the first day of September, 1920, to the present time without the benefit of any guaranty and during that time it has been unable to earn a sufficient sum to pay the rental for its leased roads and interest upon its bonded debt. That for the ten months of the year 1921, its railway operating income, as that term is used in the accounts required to be kept by the Interstate Commerce Commission, has been $516,028.00.

And that the amount left to the company for the 10 months' operation, with which to pay rental of leased roads, and interest upon its bonded debt and other miscellaneous income charges, has been for said period of 10 months the sum of $516,028.00, which is not sufficient to pay the rental of leased roads, and interest upon its indebtedness, and other miscellaneous charges to income.

That immediately after what is commonly known as the Adamson Law, or the 8 hour law, passed by Congress in 1916, became effective there was a very material increase in the cost of operation of Norfolk Southern Railroad, a large part of which could be
81 traced directly to the passage of that Act. That during the period of Federal control, the rate of pay of all labor employed on the railroad was materially increased and this increase resulted in a very material increase in the cost of operation and under

section 312 of the Transportation Act carriers were prohibited from reducing the pay of employees or subordinate officials at any time prior to September 1, 1920, below the scale in force at the termination of Federal control. That during the year 1920 and as of July 1, 1920, the Labor Board which was created by the Transportation Act of 1920 issued an order materially increasing the scale of pay of substantially all employees and subordinate officials of railroads, including Norfolk Southern, and this increase in the scale of pay resulted in a very material increase in the cost of operation. In addition thereto, during the period of Federal control, the rules and working conditions governing the employment of labor were materially changed and these changes added materially to the cost of operation. That under the Transportation Act of 1920 Norfolk Southern Railroad Company, as a common carrier by railroad subject to the Interstate Commerce Act, is prohibited from reducing its rate of pay or changing rules and working conditions of its employees without their consent or without the prior order of the Labor Board. That the net result of the Adamson or Eight Hour Law, and the Transportation Act of 1920, has been to very materially increase the cost of operation of the line of railroad operated by the Norfolk Southern Railroad Company, and without the consent of its employees, or lacking their consent without the prior approval and order of the Labor Board, reducing the scale of pay of
82 employees, it is not feasible or practicable to materially reduce the operating expenses of Norfolk Southern Railroad Company from the labor standpoint. That the labor cost of operating the line of railroad is in the best judgment of affiant about 62% of the total operating expenses.

That affiant prepared the table attached to the bill marked Exhibit C, and that the same is a true and correct statement taken from the books of the United States Railroad Administration and Norfolk Southern Railroad Company and shows the results of the operations of the property of Norfolk Southern Railroad Company for and during the period of time set out in said table. That owing to inability to obtain money from operations with which to meet its fixed charges, Norfolk Southern Railroad Company has since September 1, 1920, been unable to expend the amounts which it could properly have expended in the maintenance of its equipment and roadbed. That while its roadbed has been kept in a safe condition, Norfolk Southern Railroad Company has not been able to expend thereon in maintenance that sum which in the best interest of the company and the best interest of the public should have been spent. That it has been unable for lack of funds to expend in the maintenance of its equipment that amount of money which it could properly have spent in order to best serve the public and to produce the best operating results. That all of the mortgages on property of Norfolk Southern Railroad Company are closed mortgages except its First and Refunding Mortgage, bearing date February 1, 1911. That the bonds issued under that mortgage have sold on the open market in New York as low as 40 cents on the dollar. That they are

now quoted, according to the quotations last seen by affiant at between 50 and 55 cents on the dollar.

J. C. NELMS, JR.

Sworn and subscribed to before me, this 22d day of December, 1921.

[SEAL.] GILBERT C. REVEILLE,
Notary Public.

My commission expires 31st day of August, 1924.

83 *Affidavit of C. P. Dugan.*

Filed Dec. 24, 1921.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS et al.

C. P. Dugan, being first duly sworn, deposes and says, that he is Superintendent of Transportation of Norfolk Southern Railroad Company, and as such has charge of the car records of that Company; that in May and June, 1921, Norfolk Southern Railroad Company owned, including those under lease from Atlantic & North Carolina Railroad Company, 3529 revenue freight cars; that over 60% of these cars were of 60,000 pounds capacity; that on May 2, 1921, the company had 628 bad order cars. This number gradually increased up to June 30, 1921, on which date it had on hand 688 bad order cars; that since June, 1921, the bad order cars have increased until as of December 17, 1921, there were on hand 887 bad order cars. That after the passage of the Transportation Act of 1920, Norfolk Southern Railroad Company made application to the Interstate Commerce Commission for the loan of $375,000.00 under the provisions of that Act for the purpose of rebuilding with steel center sills and underframes 400 bad order cars, many of which had been on the side tracks of the company for practically the entire period of Federal control; that the Interstate Commerce Commission approved the loan of $375,000.00, upon condition that Norfolk Southern Railroad Company would do certain things, which up to the present time, by reason of statutory regulations it has been unable to do and perform, and it has been unable to obtain the money from any other sources to rebuild and rehabilitate its cars; that during the period of Federal control its cars were scattered widely over

the United States, and passed into the hands of a great many carriers and these cars have been coming back in varying degrees of frequency from shortly after the end of Federal control until the present time. When Norfolk Southern cars are return by other lines, it is found that a great many of them are in bad condition and need heavy repairs. Under conditions existing in the country
84 Norfolk Southern Railroad Company has been unable at any time during the past 20 months to obtain, either from operation or otherwise, the money necessary to put its cars in repair. This necessitates their being laid up on the side tracks where they rapidly depreciate in value. The longer these cars stand on the side track unused and unrepaired, the greater the deterioration and the more costly they are to repair. By reason of the inability of Norfolk Southern to expend the amount of money necessary to put its bad order cars in condition for interchange service, the car hire, or amount paid to other roads for rent of equipment is gradually increasing and will continue to do so until more cars can be put in the service or the business falls off so that there will be less use for the cars.

That Norfolk Southern Railroad Company, in addition to keeping repaired so that they may be interchanged, the foreign cars on its lines, has for some time past been able to make light repairs to about thirty of its own freight cars per day, and with this the number of bad order cars has increased about two hundred since June 1st. That owing to the economies which Norfolk Southern Railroad Company, together with many other railroad companies in the country, have been compelled to put in force, its revenue freight cars, serviceable for interchange conditions, have been and are gradually diminishing and unless it can find the means with which to rehabilitate many of its cars and repair those not needing complete rehabilitation this condition will continue to grow worse.

Norfolk Southern Railroad Company owned, as of May and June 1, 1921, including those leased from Atlantic & North Car-
85 olina Railroad Company, 99 passenger train cars, that is cars used in passenger trains; in addition thereto it owned some second hand tourist cars, which it bought for the purpose of converting them into passenger cars as rapidly as it could find the money to pay for the work. Some, since June 1st, have been converted and put in service, the others are still unconverted. Under the rules established for the interchange of cars between lines of railroad companies, certain classes of repairs have to be done on cars, although they may not be in the possession of the owner. Owing to the condition of Norfolk Southern Railroad Company's freight equipment, the bills which it has to pay foreign lines for repairs to its cars are very heavy, and run about $6,000 or $7,000 a month in excess of the amount that foreign lines pay Norfolk Southern Railroad Company for repairs to their cars.

C. P. DUGAN.

Sworn and subscribed to before me this the 23rd day of December, 1921.

J. R. PRITCHARD,
Notary Public.

My commission expires on the 10th day of January, 1925.
[SEAL.]

86 *Additional Affidavit of J. C. Nelms, Jr.*

Filed Jan. 21, 1922.

In the United States District Court, Eastern District of North Carolina.

NORFOLK SOUTHERN RAILROAD COMPANY
vs.
A. D. WATTS et al.

J. C. Nelms, Jr., being duly sworn, says that he is General Auditor of Norfolk Southern Railroad Company, and the information in the tabulation attached hereto is true and correct and taken from the original affidavits filed in the United States District Court in the case of Norfolk Southern Railroad Company vs. A. D. Watts, et al.

J. C. NELMS.

Sworn and subscribed to before me this 19 day of January, 1922.
GILBERT REEVEILLE,
Notary Public.

87 Name of county.	Number conveyances.	Consideration for conveyance.	Assessed value.	Percentage of assessed value to sales value.
Currituck	28	$108,781.86	$72,210.32	66.3
Camden	15	107,200.00	47,024.00	43.86
Pasquotank	61	188,681.15	126,778.00	66
Perquimans	27	95,002.00	87,775.00	92.3
Chowan	27	106,545.00	97,300.00	91.3
Gates	40	133,575.00	84,760.00	63.4
Tyrrell	15	48,603.33	34,232.00	70.4
Beaufort	94	555,540.00	393,592.00	75
Carteret	32	121,433.00	119,900.00	98.7
Jones	25	204,486.00	117,763.00	57.5
Lenoir	58	212,579.06	191,465.00	90
Wayne	23	129,020.00	82,330.00	63.8
Hyde	27	84,712.50	60,905.00	70.7
Greene	..	.....	.....	....
Dare	..	.....	.....	....
Pamlico	16	32,450.00	15,556.00	47.9
Stanly	68	151,374.00	119,256.00	78.7
Montgomery	26	244,638.00	158,764.00	70
Cabarrus	52	146,619.00	90,602.00	61.7
Total	634	$2,671,239.90	$1,900,212.32	71.1

88

Affidavit of J. C. O'Brien.

Filed Jan. 24, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. —.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS et al.

C. J. O'Brien, being duly sworn, says that he has brought together the information shown in the attached affidavits, for the several Counties of North Carolina, set opposite the name of each affiant, and finds that said affidavits show:

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Alamance	B. M. Rogers	$517,606.00	$355,184.00	68.62
Alexander	J. P. Crouch	50,175.00	24,860.00	49.54
Alleghany	E. L. McMillan	97,167.56	70,088.00	72.13
Anson	Fred J. Coxe	111,603.42	67,721.00	60.68
Ashe	C. W. Higgins	225,374.89	122,591.00	54.39
Avery	Avery Goodman	63,480.50	52,975.00	83.45
Beaufort	Chas. M. Weeks	555,540.00	393,592.00	70.84
Bertie	P. T. Perry	304,883.80	153,828.00	50.46
Bladen	D. B. Johnson	131,930.00	123,267.00	93.40
Brunswick	L. J. Poisson	61,610.00	44,600.00	72.39
Buncombe	George H. Wright	3,261,452.00	2,255,839.00	69.16
Burke	George H. Battle	96,380.00	51,268.00	53.19
89				
Cabarrus	John H. Oglesby	146,619.00	90,602.00	61.78
Caldwell	John M. Crisp	85,905.00	74,960.00	87.26
Camden	P. G. Sawyer and M. B. Simpson	107,200.00	47,024.00	43.85
Carteret	D. W. Morton	121,433.00	119,800.00	98.66
Caswell	E. F. Upchurch	92,506.00	56,660.00	61.25
Catawba	Klutz B. Clippard	369,116.00	211,231.00	57.22
Chatham	Jas. L. Griffin	99,445.00	58,594.00	58.90
Cherokee	W. M. West	128,522.00	84,042.00	65.39
Chowan	R. W. Boyce	106,545.00	97,300.00	91.32
Clay	Wayne L. Swanson	54,550.00	39,010.00	71.51
Cleveland	R. L. Weathers	428,109.35	301,044.00	70.30

Columbus	L. V. Grady	228,820.00	167,222.00	73.08
Craven	Wm. Dunn, Jr.	379,831.66	310,610.00	81.77
Cumberland	E. L. Hall	414,122.03	270,615.00	65.35
Currituck	P. G. Sawyer and M. B. Simpson	108,781.86	72,210.32	66.37
Dare				
Davidson				
Davie	W. H. Phillips	478,760.00	258,653.00	54.02
Duplin	J. S. Daniel	35,438.00	28,308.00	79.88
Durham	H. L. Stevens	87,165.00	62,250.00	71.41
Edgecombe	M. G. Markham	492,250.00	336,532.00	68.40
Forsyth	J. L. Bridgers	209,382.24	133,055.00	63.00
Franklin	Phillip L. Kainer, R. G. Parker, C. A. Vogler	2,139,311.57	1,526,368.70	71.34
Gaston	Hugh W. Perry	75,458.29	43,472.00	57.60
Gates	Cecil C. Cornwell	202,167.00	136,974.00	67.70
Graham	P. L. Hoffler	133,575.00	84,760.00	63.45
Granville	A. H. Eller	39,904.50	17,486.00	43.82
Greene	C. G. Powell	272,387.87	141,930.00	52.10
Guilford				
Halifax	John H. McAdoo	2,337,104.00	1,627,041.00	69.61
Harnett	R. C. Dunn	237,303.50	125,777.50	54.69
Haywood	J. C. Clifford	116,685.00	70,045.00	60.03
Henderson	T. Troy Wyche	221,720.83	129,342.00	58.33
Hertford	Mrs. J. E. Bishop	678,562.05	591,194.05	87.12
Hoke	J. E. Vann	100,226.00	67,268.00	67.12
Hyde	Oscar Leach	24,042.25	22,325.00	92.85
Iredell	Elmo Mann	84,712.50	60,905.00	71.90
Jackson	John L. Millholland	224,435.00	155,250.00	69.17
	Raymond R. Nicholson	190,967.00	44,125.00	23.10

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Johnston	E. F. Ward	382,507.56	224,047.25	58.57
Jones	John R. Barker	204,486.00	117,763.00	57.58
Lee	D. E. McIver	90,027.00	74,457.00	82.70
Lenoir	C. W. Pridgen	212,579.06	191,465.00	90.06
Lincoln	John E. Hoover	217,764.00	111,146.00	52.40
Macon	J. F. Ray	32,275.00	19,775.00	61.26
Madison	J. Will Roberts	29,780.00	18,327.00	61.54
Martin	H. W. Stubbs	623,064.03	238,679.00	38.31
McDowell	H. R. Ledbetter	93,675.00	54,480.00	58.16
Mecklenburg	Geo. M. Phifer	3,169,115.25	1,815,279.50	57.28
Mitchell	J. D. Pannell	93,991.00	65,056.00	69.21
Montgomery	W. L. Wright	244,638.00	158,764.00	64.89
Moore	N. A. McKeithen	210,678.00	119,410.00	56.70
Nash	J. P. Bunn	361,740.43	165,891.00	45.85
New Hanover	Wm. L. Smith	989,207.00	866,550.00	87.60
Northampton	P. F. Calvert	54,848.00	48,620.00	88.64
Onslow	Frank Thompson	82,418.00	75,475.00	91.46
Orange	J. F. McAdams	162,269.00	120,706.00	74.38
Pamlico	G. V. Rawls	41,150.00	15,556.00	37.80
Pasquotank	P. G. Sawyer and M. B. Simpson	188,681.15	126,778.00	67.14
Pender	J. T. Bland	90,000.00	64,885.00	72.90
Perquimans	W. F. C. Edwards	95,002.00	87,775.00	92.39
Person	A. P. Clayton	59,124.00	45,570.00	77.07

Pitt	C. F. Manning — J. C. Gaskins	459,976.50	383,157.00	83.00
Polk	W. C. Hague	40,743.20	28,929.00	71.00
Randolph	John M. Brittian	235,365.00	135,150.00	57.42
Richmond	H. V. Guthrie	80,070.00	55,610.00	69.40
Robeson	Wade Wishart	119,272.00	68,004.00	57.00
Rockingham	Nurna Winstead	815,821.00	524,584.00	64.30
Rowan	Max L. Barker	179,097.90	130,391.75	65.52
Rutherford	M. T. Wilkie	106,706.93	79,672.00	74.70
Sampson	H. A. Grady	222,556.00	110,837.00	49.80
Scotland	T. J. Dunn	61,200.00	39,561.00	64.64
91				
Stanley	George P. Palmer	151,374.00	119,256.00	78.78
Stokes	N. Earl Wall	169,465.00	100,339.00	59.20
Surry	B. F. Folger	198,624.00	108,860.00	54.80
Swain	D. E. Nichols	55,435.00	40,374.00	72.83
Transylvania	Roland Owen	39,950.00	24,870.00	62.25
Tyrell	A. Melson	48,603.33	34,232.00	70.41
Union	M. L. Flow	473,906.00	331,924.00	70.00
Vance	Robert G. Kittrell	500,066.00	307,311.00	61.50
Wake	H. E. Glenn	810,175.00	716,648.00	88.45
Warren	E. C. Price	131,427.33	69,200.00	52.60
Washington	Z. V. Norman	112,102.50	58,230.50	51.95
Watauga	T. E. Bingham	207,632.00	133,018.00	64.07
Wayne	D. E. Grantham	244,675.00	87,851.00	35.91
Wilkes	Frances Hendren	113,512.40	66,214.00	58.33
Wilson	R. L. Brinkley	304,964.00	191,107.00	63.44

County.	Name of affiant.	Consideration in deeds recorded 6 months, 1/1/21 to 6/30/21.	Total assessed value same property, 1921.	Per cent assessed value to deed value.
Yadkin	John D. Reece	71,495.00	48,128.50	67.31
Yancey	C. C. Caraway	194,974.00	173,972.00	89.22
Total		$30,598,475.24	$20,373,684.07	66.58

C. J. O'BRIEN.

Subscribed and sworn to before me, this 24th day of January, 1922.
[SEAL.]

R. L. BLAYLOCK,
Clerk U. S. Dist Court.

92 *Affidavit of M. S. Hawkins.*

Filed Jan. 30, 1922.

In the United States District Court for the Eastern District of North Carolina.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS et als.

M. S. Hawkins, being first duly sworn, says:

That he is Secretary of Norfolk Southern Railroad Company, and also Assistant to the President; that he has occupied those positions with said Company from March 1, 1920, down to the present time; that immediately preceding March 1, 1920, he was Federal Manager of Norfolk Southern Railroad Company; that his office is charged with the duty of looking after the listing of the property of said railroad company, and of handling its tax matters.

That no request was made upon the Norfolk Southern Railroad Company by the State Tax Commission of North Carolina during the year 1920 or prior to or since that time for specific or detailed information as to the cost of reproduction of the properties of Norfolk Southern Railroad Company, in the State of North Carolina,
93 so far as affiant ever heard; that a careful search of the files of the company fail to disclose any such request or any response. That on the contrary, as affiant is informed and believes, and so avers, at that time the State Corporation Commission, which under the laws of the State of North Carolina, as affiant is advised, constituted and was the State Tax Commission, had in its possession and under its control full and complete information as to the cost of reproduction new, and cost of reproduction less depreciation of the line of railroad owned by Norfolk Southern Railroad Company and its lessor companies, Atlantic & North Carolina Railroad Company and Carthage & Pinehurst Railroad Company.

That affiant is informed, believes and avers that on or about July, 1919, the Interstate Commerce Commission served on the Governor of North Carolina, and the State Corporation Commission of North Carolina, its estimate of the cost of reproducing new and cost of reproducing the properties of the said three companies less depreciation.

That under the law under which said estimate was made any of the parties had thirty days from August 22, 1919, in which to file objections to these estimates.

That as affiant is informed, believes and alleges, neither the State of North Carolina, or the State Corporation Commission filed any exceptions thereto.

That said report and estimate showed the court of reproduction new and cost of reproduction less depreciation of the entire
94 system, and of the part in North Carolina, and in Virginia, as follows:

			Cost of reproduction. New.	Cost of reproduction. Less depreciation.
State of Virginia—				
Total owned and used (*a*)			$3,551,726	$2,803,061
State of North Carolina—				
Total owned and used			13,695,085	11,801,522
Used, but not owned—				
Leased from the Atlantic	$2,529,181	$1,942,776		
Leased from the Carthage	133,123	111,789		
Total leased			2,662,304	2,054,565
Total used, North Carolina			$16,357,389	$13,856,087

Note *a* includes equipment assigned to the electric division between Norfolk and Virginia Coast.

Not Allocated to States.

	Cost of reproduction. New.	Cost of reproduction. Less depreciation.
Wholly owned and used equipment (including interest attaching to same), all except electric division	$4,158,258	$3,135,856
Owned but not used:		
Leased to Carolina Railroad	9,616	6,384

The above amounts classified in conformity with the classification of expenditures for road and equipments as prescribed are shown in the summary sheets which are a part of this report as Appendix A.

The present value of the lands owned or used by the Norfolk Southern are as follows:

	Acres.	Present value.
Owned by the Norfolk Southern:		
Urban	312.256	$1,391,324.26
Rural	9,148.889	1,027,374.05
Total owned	9,461.145	$2,418,698.31
Used by the Norfolk Southern, but owned by the Atlantic:		
Urban	122.672	$501,373.03
Rural	1,129.070	81,899.30
Total	1,251.742	$583,272.33
The Carthage:		
Rural only	158.769	8,917.64
Other than common carrier	0.983	464.50

95 All of the lands used but not owned are within the State of North Carolina. The owned lands are divided between Virginia and North Carolina as follows:

State.	Acres.	Present value.
Virginia—		
Urban	58.173	$614,380.50
Rural	969.883	272,053.11
Total	1,028.056	$886,433.61
North Carolina—		
Urban	254.083	776,943.76
Rural	8,179.006	755,320.94
Total	8,433.089	$1,532,264.70

Norfolk Southern Railroad Company owns non-carrier lands of the following amounts and values, including the value of improvements owned by the carrier:

State.	Acres.	Present value.
Virginia—		
Urban	37.125	$64,103.83
Rural	303.161	69,756.47
Total	340.286	$133,860.30
North Carolina—		
Urban	83.504	$175,281.86
Rural	1,756.592	128,999.35
Total	1,840.096	$304,281.21
Total Urban	120.629	$239,385.69
Total Rural	2,059.753	198,755.82
Grand Total	2,180.382	$438,141.51

That the said report of the Interstate Commerce Commission showed the following:

"Investment in Road and Equipment.—The investment in road and equipment is stated in the books of the carrier to be $28,333,-531.03 which included:

Cost of road purchased		$21,889,341.21
The Railway Company	$18,522,755.79	
The Raleigh	3,366,585.42	
Completion of roads purchased		3,485,359.10
Reconstruction of roads purchased		519,150.16
Additions and betterments		2,439,680.56
Total		$28,333,531.03

96 An examination of the available records of the present corporation and the numerous predecessors discloses that the statement of investment is too large. However, the accounts have not been so kept as to permit the determination of what the investment was, except upon the basis of certain assumptions. The best result obtainable is only a maximum amount. It is not a figure that can be taken as the actual investment in road and equipment; for, in view of the state of the records, as a whole, that fact can not be determined. What has been found is reported as the best information available on the question of the actual investment, and is believed to show the upper limit within which the unascertainable actual investment lies.

Summaries of the results obtained as to this maximum figure are as follows:

Cost of roads purchased		$15,506,008.20
The Raleigh	$1,800,980.66	
The Railway Company	13,705,037.54	
Road extensions		3,300,711.56
Reconstruction of road purchased		519,150.16
Additions and betterments		1,730,819.55
Total		$21,056,699.47

The distribution of this amount by primary accounts is shown in Exhibit A to Appendix 2.

The difference $7,276,831.56, between the above maximum amount and the carrier's book figures is explained in detail in Appendix 2 and Exhibits B and C thereto. Also in that appendix will be found an explanation of the character of the records of investment and of the adjustments therein necessary to reduce the inaccuracies to the lowest degree possible.

97 In addition to the investment in its own carrier property, the Norfolk Southern uses under lease for its carrier purposes other property, the investment in which has been found to be not in excess of amounts as follows:

Improvements on leased property	$447,997.45
The Atlantic	1,943,945.28
The Carthage	106,900.00
Total	$2,498,842.73

which, added to the maximum of its own property, gives a total of $23,555,542.20, as the maximum figure for the investment in all property used by the Norfolk Southern for its purposes as a common carrier.

The amount of the improvements on leased property is shown distributed by primary accounts in "Exhibit A to Appendix 2."

Affiant is informed, believes and alleges that all of the foregoing facts and figures were well known to the State Tax Commission (Cor-

poration Commission) or should have been known as they had as a part of their records the foregoing report.

Norfolk Southern Railroad Company did not at any time represent to the State Tax Commission of North Carolina that the above mentioned figures did not represent the cost of reproduction new or cost of reproduction less depreciation of its properties.

The correspondence attached marked Exhibit D passed between affiant and J. S. Griffin.

98 Norfolk Southern Railroad Company was required to and did file with the State Tax Commission a detailed statement showing all of its property and the number of shares of stock outstanding—the par value thereof and the market value—the amount and market of its outstanding bonds, and other funded indebtedness.

That the report showed 160,000 shares of stock outstanding of the par value of $16,000,000.00 and of the market value of $2,560,000.00, and its bonds and other funded debt outstanding of the par value of $17,754,000.00 and actual or market value of $11,891,525.00 for Norfolk Southern Railroad Company.

Norfolk Southern Railroad Company, nor anyone for it, ever insisted or claimed that the proportion of its total investment account which its main line mileage within the State of North Carolina bore to its total main line mileage would give a fair value of its property in North Carolina, but on the contrary has always insisted that its property should be valued according to the rule laid down by the Constitution of the State at its true value in money.

That while it may be true that the price of labor and materials had in 1919 and 1920 increased over the price of similar materials in 1914, the value of the railroad property of Norfolk Southern Railroad Company and its leased lines had not increased but on the contrary had decreased in value if anything, for that as affiant is advised, under the Interstate Commerce Act, the cost of reproduction new and cost of reproduction less depreciation of Norfolk Southern and its lessor companies had been ascertained by the Inter-

99 state Commerce Commission, and this had been reported under the law to the Attorney General of the United States, and the Governors and State Corporation Commissions of Virginia and North Carolina, in which said property is and was situate, and they had not objected thereto, and as affiant is informed and believes the rates of fares and charges which Norfolk Southern Railroad Company could charge was fixed by law, and the amount of its earnings which it could retain was fixed by law, and the rate of pay which it must pay for labor was fixed by law, and the scale of charges and amounts of earnings which it could retain was fixed upon the cost of reproduction, less depreciation, as reported by the Interstate Commerce Commission, all of which facts and matters, as affiant is informed and believes, were known to the State Tax Commission at the time it made the assessment, and this valuation could not be changed except by the Interstate Commerce Commission, and they had made no change since 1914 and have made none since.

Affiant is advised that under the law Norfolk Southern Railroad Company may not abandon the operation of its property without

leave first had and obtained from the United States, and says that where property is required by law to be devoted to a particular use, the value of the property has a direct and positive connection to the amount which the owner may receive from the use of such property after paying operating expenses, repairs, maintenance and taxes; that Norfolk Southern Railroad Company is required by law to make report of its operations to the Corporation Commission of North Carolina (State Tax Commission) and that the members of the State Tax Commission knew or should have known from
100 such reports that the net operating railway revenue of Norfolk Southern Railroad Company had materially declined in 1919 and 1920 from what it was in 1914, 1915 and 1916.

The State Tax Commission (Corporation Commission) knew at the time they made their assessment in 1920 what the gross earnings, operating expenses, and net operating railway income were, both before and after taxes had been paid, for the past 8 years, and knew or should have known that the net operating railway income of Norfolk Southern Railroad Company had decreased each year from 1916 to the time of valuation.

This affiant is informed and believes that the report of the State Tax Commission to the Governor of North Carolina, bearing date August 10, 1920, which was transmitted by the Governor to the General Assembly, a copy of which is hereto attached marked A, sets out the sole and only basis on which railroad property in the State of North Carolina was valued and sets forth the reasons for such action, and that the method of valuation set out in said report as to railroads was intentional as therein set out and for the purpose of increasing the assessment of railroad property above what the Commission in its report stated had been considered the true value of such property.

This affiant says that the State Tax Commission of North Carolina at the time it made its assessment of Norfolk Southern Railroad Company's property had before it the actual cost of reproduction new less depreciation, brought down to that date, of all the prop-
101 erty of Norfolk Southern Railroad Company, and its lessor lines and a copy thereof is set out in Exhibit B hereto attached.

That on or about May 20, 1920, Norfolk Southern Railroad Company, acting under the laws of North Carolina, made its annual report to the Corporation Commission, for the year ended December 31, 1919; that this report showed that the "Account No. 701, Investment in roadway property and equipment" as it is designated in the forms prepared and sent out by said Commission, was $30,777,491.88 including improvements on leased roads.

That the State Tax Commission assessed for taxation for the year 1920 the property of Norfolk Southern Railroad Company, and its two lessor companies' property at $27,023,462.00, which is slightly more than 87.734% of said investment account, said 87.734% of $30,777,491.88 being $27,002,324.00.

That in 1921 Norfolk Southern Railroad Company filed with State Tax Commission (Commissioner of Revenue) a petition to re-

view and reduce the assessed value of its properties. A copy of the petition and papers are attached, marked "C."

As of June 11, 1921, the Interstate Commerce Commission made its final report of the value of Norfolk Southern Railroad Company's owned and leased lines, which was as follows:

"Final Value.—After careful consideration of all the facts contained in the tentative, and supplemental tentative valuations, including the excess cost of carrier lands, appreciation, de-
102 preciation, going concern value, working capital, including materials and supplies, and all other matters which appear to have a bearing upon the values here reported, the values, as that term is used in the Interstate Commerce Act, of the property of the carrier owned and used, owned but not used, and used but not owned, devoted to common carrier purposes, are found to be as follows:

Wholly owned and used	$21,883,575
Owned but not used, leased to Carolina Railroad Company	6,500
Used but not owned—	
Leased from:	
The Atlantic	2,652,800
The Carthage	127,000
Private parties	465
Total	$2,780,265
Total owned	21,890,075
Total used	$24,663,840

There is included in the value above stated as wholly owned and used the sum of $663,575 on account of working capital and materials and supplies."

This fact was about July 25, 1921, as affiant is informed and believes, called to the attention of the State Tax Commission (Commissioner of Revenue) by a letter of that date and the receipt of this letter by the Commissioner of Revenue was duly acknowledged.

This affiant says that neither he nor anyone else authorized to speak for Norfolk Southern Railroad Company has ever requested or consented that its property in North Carolina be valued at a main line mileage pro rate of the cost of replacement new, less depreciation brought down to date.

103 That in the petition filed for review of the prior assessment Norfolk Southern did set forth figures showing a main line mileage pro rate of the cost of replacement new, less depreciation as a reason why the prior assessment was too high, just as it showed a main line pro rate of the value of stocks and bonds and the capitalization of its earnings, and of a proportionate cost of replacement in each of the two states in which it operates, of each of said

leave first had and obtained from the United States, and says that where property is required by law to be devoted to a particular use, the value of the property has a direct and positive connection to the amount which the owner may receive from the use of such property after paying operating expenses, repairs, maintenance and taxes; that Norfolk Southern Railroad Company is required by law to make report of its operations to the Corporation Commission of North Carolina (State Tax Commission) and that the members of the State Tax Commission knew or should have known from
100 such reports that the net operating railway revenue of Norfolk Southern Railroad Company had materially declined in 1919 and 1920 from what it was in 1914, 1915 and 1916.

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This affiant says that the State Tax Commission of North Carolina at the time it made its assessment of Norfolk Southern Railroad Company's property had before it the actual cost of reproduction new less depreciation, brought down to that date, of all the prop-
101 erty of Norfolk Southern Railroad Company, and its lessor lines and a copy thereof is set out in Exhibit B hereto attached.

That on or about May 20, 1920, Norfolk Southern Railroad Company, acting under the laws of North Carolina, made its annual report to the Corporation Commission, for the year ended December 31, 1919; that this report showed that the "Account No. 701, Investment in roadway property and equipment" as it is designated in the forms prepared and sent out by said Commission, was $30,777,491.88 including improvements on leased roads.

That the State Tax Commission assessed for taxation for the year 1920 the property of Norfolk Southern Railroad Company, and its two lessor companies' property at $27,023,462.00, which is slightly more than 87.734% of said investment account, said 87.734% of $30,777,491.88 being $27,002,324.00.

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103 That in the petition filed for review of the prior assessment Norfolk Southern did set forth figures showing a main line mileage pro rate of the cost of replacement new, less depreciation as a reason why the prior assessment was too high, just as it showed a main line pro rate of the value of stocks and bonds and the capitalization of its earnings, and of a proportionate cost of replacement in each of the two states in which it operates, of each of said

items. And in the letter of General Counsel of the Company to Commissioner of Revenue, dated July 25, 1921, it was stated that unless the State of North Carolina would join in asking the Interstate Commerce Commission to increase the value of Norfolk Southern's property for rate making, it should not be assessed at any higher rate for taxation.

That Norfolk Southern Railroad Company owned all the capital stock of the Carthage & Pinehurst Railroad Company, and has operated said line of railroad as lessee.

That the replacement cost less depreciation of said property $127,000.00; that owing to the great loss accruing to the Norfolk Southern Railroad Company it filed a petition to desist from operating same, and to abandon same. This authority has been granted.

Norfolk Southern has offered to sell the entire property of that company for $37,500.00, the amount of the bonds thereon, but has been unable to do so.

The best price that has so far been suggested is $25,000.00 and that was not an offer, simply a request for an option to buy at that price.

104 That the only value of said property of said company is what it will sell for as scrap or second hand material and what the lands it owns in fee will sell for. That it is doubtful if this property will sell in its entirety or in any other way for as much as thirty thousand dollars.

That under the rule adopted by the Commissioner of Revenue this property is included in the valuation of Norfolk Southern property for not less than $127,000.00.

That under the rule adopted by the State of North Carolina as administered by the Commissioner of Revenue, Norfolk Southern Railroad Company is required to pay taxes in Moore County on a valuation of $255,672.00 for the 12 miles of road belonging to Carthage and Pinehurst Railroad, which cannot be sold for $37,500.00.

That in North Carolina, Norfolk Southern Railroad Company has the following branch lines, which are costly to operate and have very light tonnage, and which materially reduce the earning power and value of its properties in North Carolina:

Beckford Jct. to Suffolk Jct. near Elizabeth City	21 miles
Columbia Branch, Mackey to Columbia	22 miles
Belhaven Branch (including Pinetown cut-off)	41 miles
Oriental Branch, New Bern to Oriental	26 miles
Fayetteville Branch, Varina to Fayetteville	44 miles
Ellerbe Branch, Candor to Ellerbe	18 miles

Total branch line mileage in North Carolina, 172 miles, out of a total main line mileage in the State of 827.647. That the cost of replacement of these branch lines is nothing like as great as the cost of replacing the main line, mile for mile. That the value of these branch lines, mile for mile, is nothing like as great as
105 the main line for that owing to the slight amount of travel and freight moving thereon, the cost of operation on some

if not all of them become an actual burden upon the main line revenue. That the density of traffic and consequent increased value of railroad per mile as the road travels, goes Northward, that is toward and in Virginia.

M. S. HAWKINS.

Sworn and subscribed to before me this 21st day of January, 1922.
[SEAL.]
J. R. PRITCHARD,
Notary Public.

My commission expires 10th day of January, 1925.

EXHIBIT A.

Valuation of Railroads.

One frequent criticism has been that the valuation of railroad properties could not be increased, it being understood that they were assessed at full value before. Our report shows that railroad properties have been increased from $125,417,618 to $250,587,158, or more than doubled. Under the new Interstate Commerce Act the Interstate Commerce Commission is required to make rates that will yield an average return of not less than five and one-half per cent upon the railroad lines as a whole, and to find the fair value of these properties as the basis for making the new rates. That Commission has not yet determined the basis on which the value of the railroad lines will be finally fixed. It will take several years to complete the physical valuation of all of these properties. Pending this final
106 valuation the railroad lines have submitted to the Interstate Commerce Commission what is known as their investment accounts and have asked that this basis of value be used for determining the scales of rates and amount of return they are entitled to earn on their properties. It seems clear to us that the time has come when the value upon which a railroad or public utility is permitted to earn a return is the value upon which it should pay taxes in this State. In either case the purpose is to find the fair value of the property. So that generally our valuation of the railroad lines in this State is based upon a mileage proportion of their investment account, which they have asked the Interstate Commerce Commission to adopt as the basis for making their rates, and to this mileage proportion we have added the value which we find to represent the intangible value of their North Carolina lines, based upon the volume of business in this State greater than the average volume of traffic on their lines as a whole.

The experiences of recent years have been conclusive that any amount of tax levies against railroad companies is a tax upon the whole public served by them. If it were legal to do so, and we were to collect all public revenue from railroad companies, it would simply mean that we would pay our taxes through railroad depots and ticket offices instead of the public officers who now collect them. The new assessment of railroads does not represent as great an increase

as the average increase of other property, for the reason that they were assessed relatively higher than other property before, but we anticipate that it will meet the fair demands of public opinion when it is known that they are assessed like other property at their
107 full value, and upon a valuation quite as high as that upon which they are asking to be permitted to earn a return.

EXHIBIT B.

Cost of Reproducing New Less Depreciation of Norfolk Southern Railroad Company's Owned and Leased Property in North Carolina, Brought Down to 1920, Including all of its Equipment Wherever Located.

	N. S. R. R.	A. & N. C. R. R.	C. & P.
Engineering and Overhead	$1,524,105	$231,188	$11,321
Land used for Carrier Purposes	1,335,362	582,155	8,915
Non-carrier Lands	501,148	150,532	3,350
Road Bed and Track	9,381,012	1,111,360	89,713
Crossings and Signs and Fences	122,142	6,488	397
Telegraph and Telephone Lines	83,789	9,233	112
Signals and Interlockers	17,488	2,161	.....
Station and Office Buildings	409,055	162,221	2,800
Roadway Buildings	92,094	5,420	5,917
Water Stations	93,129	10,700	500
Fuel Stations	43,876	5,290	.....
Shop and Equipment	97,669	79,085	.....
Roadway Machines	53,317	.....	.....
Steam Locomotives (entire system)	544,048	42,400	.....
Freight Train Cars (entire system)	3,125,321	15,795	.....
Passenger Train Cars (entire system)	257,580	50,683	.....
Work Equipment	78,334	2,470	.....
Miscellaneous	84,791	89,119	.....
Total	$17,844,260	$2,556,300	$123,025

EXHIBIT C.

In the matter of Application of NORFOLK SOUTHERN RAILROAD COMPANY for a Review of the Assessment of Its Property and the Property of its Lessors on Which It Pays Taxes, Made under the Provisions of Section 28-C of the Machinery Act of 1921, Ratified the 8th Day of March, 1921.

Norfolk Southern Railroad Company respectfully showeth:

1st. That it owns a line of railroad extending from the City
108 of Norfolk, in the State of Virginia, to the City of Charlotte, in the State of North Carolina, with certain branch lines;

that it operates as a part of said railroad system: (*a*) a line of railroad leased from the Atlantic & North Carolina Railroad Company, extending from Morehead City to Goldsboro; (*b*) a line of railroad leased from the Carthage & Pinehurst Railroad Company extending from Pinehurst, North Carolina, to Carthage, North Carolina.

2nd. That there is of said railroad 900.543 miles of main line, of which 790.264 is situate in the State of North Carolina, and 110.279 is situate in the State of Virginia.

Said main line is divided as follows: In Virginia, owned line 110.279. In North Carolina, owned line 682.128 miles; leased from the Atlantic & North Carolina Railroad Company 95.91 miles; leased from the Carthage & Pinehurst Railroad Company 12.226 miles.

3rd. Acting in accordance with the provisions of section 62 of the Machinery Act of 1919, the petitioner in 1920 duly listed with the list takers of the county where situate, all of its machine and repair shops, general office buildings, storehouses and contents located outside of the right of way, and also all real and personal property, other than the property returned to the State Tax Commission; and said property was by said List Takers and the assessors assessed for taxation at the sum of $792,666.00.

Petitioner has filed application with List Takers in accordance with the provisions of the laws of North Carolina for the re-
109 duction in the assessment of some of said property, and many of the counties in the State have, as petitioner is advised, by ordinances of the county commissioners, or other tax reviewing authorities, reduced the assessment, not only on petitioner's property, but upon the real property of all other taxpayers in such counties.

Petitioner is unable at this time to state what will be the valuation fixed by local appraisers upon the property required to be listed locally, and so listed by petitioner.

4th. The Tax Commission is required under the laws of North Carolina to ascertain the value of the physical and tangible property and the franchises of Norfolk Southern Railroad Company in its entirety, such value is required to be divided between the several States in which the said line of railroad operates, according or in proportion to the number of miles of main line of railroad in each State, giving due consideration to other matters affecting such division. Apparently the Tax Commission assessed the value of the Norfolk Southern Railroad Company's entire system at $30,806.675.00, and allotted to the State of North Carolina $27,034,168.00, being the mileage proportion of such valuation.

5th. Such valuation is excessive, when tested by any method known for the valuation of property:

(*a*) One method of testing the value of such property is, as pointed out by the statute of North Carolina, the value placed upon the whole property by the public. The only method of testing the

110 value of railroad property in its entirety by the public is to consider the price at which its bonds and stocks sell for on the market, over a period of years.

Attached hereto is a statement, marked Exhibit "A," showing the outstanding bonded indebtedness of this Company, the Atlantic & North Carolina Railroad Company and the Carthage & Pinehurst Railroad Company, for the past six years, and the capital stock of each of these companies, together with their market value as shown by the prices at which the various bonds and stocks were sold during these years. Tested by this method it conclusively appears that the value of the property of the Norfolk Southern Railroad Company, including both its tangible and intangible property, including all of its choses in action (which are not subject to taxation in the State of North Carolina, and which are considerable in amount), does not aggregate the value placed upon the property by the Tax Commission during the year 1920.

6th. Another method of determining the value of property is by ascertaining the net earnings of such property under careful and efficient management and capitalizing these net earnings at a proper rate of interest. That for a long number of years the rate of charges Norfolk Southern Railroad Company might make for transportation over its line of railroad has been fixed by both State and Federal statutes, each within its own sphere.

On and as of the first day of January, 1918, the United States Government, as a war measure, took possession and control of the line of railroad owned and/or operated by the Norfolk South-
111 ern Railroad Company, as a fair compensation for the use of said property during the years 1918 and 1919 and to March 1, 1920, paid the same return for the property which the corporate body had been able to earn on said property on the average during the three years ended June 30, 1917.

After thorough investigation of the accounts of this company, the Interstate Commerce Commission, acting on behalf of the Government, ascertained and fixed as a proper return upon the property of Norfolk Southern Railroad Company, and as being the amount which it had earned on the average during the three years ended June 30, 1917, as the sum of $1,252,759.84 per year, giving due consideration to the potential earnings of its newly constructed lines.

Under the terms of the Transportation Act of 1920, United States Government, for the six months ended August 31st, 1920, guaranteed to the Norfolk Southern Railroad Company the same average earning as was paid during a half year of the period of Federal control. Except for said guaranty the gross income of petitioners during the said six months would not have been sufficient to pay its operating expenses.

The average annual return upon petitioner's property for the period beginning June 30, 1914, and ended August 31, 1920, has been at the rate of $1,252,759.84; that this amount, capitalized at 5½%, which the Transportation Act of 1920 established as a fair

return upon the value of property devoted to public use by railroads, would show the value of said property to be $22,777,450.00,
112 and if capitalized at 6% per annum, which the Transportation Act provides may be earned upon condition that one-half per cent be devoted to betterment of the property, the value would be $20,889,330.00.

7th. Another method of ascertaining the value of railroad property is the cost of reproduction of such property, less depreciation. Under the provisions of the Interstate Commerce Act relative to the valuation of railroad property by the Interstate Commerce Commission, agents of the Bureau of Valuation examined the property of Norfolk Southern Railroad Company, including its said leased lines; made a report of the cost of reproducing said lines of railroad, both new and with depreciation as authorized by the rules of the Commission, which included all of its non-carrier lands and buildings. A copy of the report was duly served upon the State of North Carolina. The State of North Carolina made no exception, apparently accepted the findings of the Bureau of Valuation as the cost of reproducing said property, and the cost of reproducing the same less depreciation. The Bureau of Valuation report showed the cost of reproducing the property of Norfolk Southern Railroad Company, including its leased lines, without depreciation, as $27,680,811.00, and after deducting depreciation, $23,412,336.00. Since the date of said valuation petitioner has made additions and betterments to its road bed and rolling stock according to the rules of the Interstate Commerce Commission to the value of $2,616,030.00. After being depreciated according to the rules of the Commission, the cost of reproduction less depreciation is $26,028,366.00.

113 8th. It is quite evident from a consideration of these facts and figures, that the Tax Commission, in making its valuation of 1920, failed and neglected to take into consideration the depreciation upon property which had been reported by the Interstate Commerce Commission, and which by the laws of North Carolina are required to be taken into consideration in fixing the value thereof.

9th. Testing the value of said railroad in its entirety, (including all of its property), by the value put upon it by the public, it would be $17,717,700.00; by capitalizing its average earnings for the past 6 years at 5½% it would be $22,777,450.00; by the cost of reproduction, less depreciation, including the additions, betterments and rolling stock since the report of the Interstate Commerce Commission, it would be $26,028,366.00. The average of all three would be $22,174,505.00.

Taking either of said sums and allotting to the State of North Carolina a mileage proportion, the taxable value of the property in North Carolina would be:

(*a*) Upon the sale value of the bonds and stocks the price placed on all the property by the public.

North Carolina	87.754%	$15,567,990.00
Virginia	12.246%	2,169,710.00
		$17,717,700.00

(*b*) Upon the valuation which the Act of Congress allows the Company to earn 6% cost of reproduction less depreciation.

North Carolina	87.754%	$22,840,932.30
Virginia	12.246%	3,187,433.70
Total		$26,028,366.00

114 (*c*) Upon the average annual earnings for the six years ended July 31, 1920, capitalized at 5½% amount fixed by Act of Congress as fair rate of return.

North Carolina	87.754%	$19,988,123.47
Virginia	12.246%	2,789,326.53
Total		$22,777,450.00

(*d*) Same as (*c*) capitalized at 6%, where ½% of the earnings must go into the property:

North Carolina	87.754%	$18,332,447.25
Virginia	12.246%	2,556,882.75
Total		$20,889,330.00

10th. Report of the Bureau of Valuation of the Interstate Commerce Commission, which seems to have been accepted by both Virginia and North Carolina authorities, discloses that allocating to the State of Virginia the electric equipment of the company, which is used exclusively on the electric division, which uses both steam and electric equipment, the cost of reproduction less depreciation of the properties in the two States respectively is divided as follows:

Virginia	18%
North Carolina	82%

Dividing the value of the property in its entirety on a percentage basis ascertained from the Bureau of Valuation of the Interstate Commerce Commission as the cost of reproduction less depreciation in the two States, we have the following:

(*a*) Upon the sale value of the bonds and stocks the price placed on all the property by the public.

North Carolina	82%	$14,528,514.00
Virginia	18%	3,188,186.00
Total		$17,716,700.00

(*b*) Upon the valuation which the Act of Congress allows the Company to earn 6% (cost of reproduction less depreciation).

North Carolina	82%	$21,343,260.12
Virginia	18%	4,685,105.88
Total		$26,028,366.00

115 (*c*) Upon the average annual earnings for the six years ended June 30, 1920, capitalized at 5½%, amount fixed by Act of Congress as fair rate of return:

North Carolina	82%	$18,677,509.00
Virginia	18%	4,099,941.00
Total		$22,777,450.00

(*d*) Same as (*c*) capitalized at 6%, where ½% of the earnings must go into the property:

North Carolina	82%	$17,129,250.60
Virginia	18%	3,760,079.40
Total		$20,889,330.00

11th. Attention is respectfully called to the provisions of the Interstate Commerce Act as amended by the Transportation Act of 1920.

(*a*) Rates and charges which carriers can make for transportation of commodities is limited and fixed by the Interstate Commerce Commission; therefore, Norfolk Southern Railroad Company cannot charge any higher rate than is permitted by the Interstate Commerce Commission, for any service which it may render the public. It necessarily follows that the amount, which the railroads may earn from transportation is dependent upon the rate fixed by the Interstate Commerce Commission, and the amount of commodities tendered to the Company for transportation.

(*b*) The law declares 5½% upon the aggregate value of all the property devoted by railroads to public use to be a fair return for the two year beginning March 1, 1920, and limits the authority of the Interstate Commerce Commission in fixing rates, to prescribe a set of rates which in the aggregate will yield that amount, with the power to add an additional one-half of one per cent to be invested in additions, betterments and equipment. The law further pro-
116 vides that if after such schedule of rates has been fixed, any one particular carrier should, under such schedule, by reason of greater tonnage, be able to earn more than the 6%, then and in that event certain portions of such excess earnings would be paid over to the Interstate Commerce Commission to be used by the Commission in furtherance of the public interest in railway transportation.

It necessarily follows therefore, that there is a limit in earning power beyond which property owned by railroads and devoted to public use cannot go, and this ability to earn even that rate is dependent upon the density of traffic or the amount of goods tendered to a railroad company for transportation.

(c) The Interstate Commerce Act as amended, in its practical effect, gives authority to the Labor Board sitting in Chicago to prescribe and fix a schedule of wages or salaries which railroads shall pay to their employees.

Therefore, for all practical purposes the gross earnings of railroads are prescribed by law, varying of course with the amount of freight and passengers which is tendered for transportation, and the operating expenses are also largely prescribed by law. The effect of this is naturally to limit the net earnings of railroads, and therefore reduce the value of the property, for if the earning power of property is by law fixed at a certain sum, then the value of that property is fixed by law, and varies only with the value of the purchasing power of the dollar, which the property is allowed to earn.

The practical result of legislation which has taken place during the past six years has been to materially reduce the value of railroad property.

117 Your petitioner, therefore, respectfully shows in conclusion, that its property in North Carolina has been excessively valued for taxation and the Commission is respectfully requested to reduce this valuation to such figures as may be just and proper and as shown by the foregoing facts.

Respectfully submitted,

NORFOLK SOUTHERN RAILROAD COMPANY,
By W. B. RODMAN,
General Counsel.

EXHIBIT "C."

Table showing average net income per mile from railway operation for the years 1917, 1918, 1919 and 1920, of the railroads named below, as taken from their reports for years 1917, 1918 and 1919, as published by the Bureau of Railway Economics, and for the year 1920 in the Railway Age, the comparative value per mile, based on this net, the value at which assessed, and the value of the Norfolk Southern as compared with other roads:

Name of railroad.	Average per mile net from railway operation, 4 years.	Ratio of earnings per mile to N. S.	Assessed value per mile.	Valuation of Norfolk Southern as compared with other lines, based on net from railway income.
Norfolk Southern...	$418.00	1%	$32,385.50	$32,385.50
A. C. Line.....	2,032.00	4.86%	50,864.72	10,466.00 per mile.
Seaboard Air Line..	815.00	1.95%	53,652.41	27,515.00 per mile.
Southern	3,132.00	7.49%	68,000.00	9,078.00 per mile.

Showing that Norfolk Southern, based on earning power, is valued more than three times as high as Southern or Atlantic Coast Line, and one and one-fourth times as high as Seaboard Air Line.

118 EXHIBIT "D."

State of North Carolina,
Corporation Commission,
Raleigh.

May 17th, 1920.

Mr. M. S. Hawkins, Asst. to Pres.,
Norfolk & Southern Railway,
Norfolk, Va.

DEAR SIR:

The Commission would like to have from your Company a statement of the value of your property investment filed with the Interstate Commerce Commission for the purpose of aiding the Interstate Commerce Commission in fixing its rate basis so as to arrive at a six per cent return under the Transportation Act, 1920.

The Commission would like to have this information as early as possible.

Yours very truly,
(Signed) J. S. GRIFFIN,
Clerk in Charge Revaluation Assessment.

g-e.

Copy to:
C. J. Joseph, Tax Agent, Atlantic Coast Line, Wilmington, N. C.
Mr. W. L. Stanley, Ass't to Pres., S. A. L. R. R., Atlanta, Ga.
Mr. H. G. Morrison, Gen. Counsel, C. C. & O. R. R., Johnson City, Tenn.
Mr. Murry R. Hubbard, Tax Commissioner, Southern Railway, Atlanta, Ga.

119 May 21, 1920.

Corporation Commission of State of North Carolina,
Raleigh, North Carolina.

Attention Mr. J. S. Griffin, Clerk in charge Revaluation Assessments.

GENTLEMEN:

I have yours of the 17th in which you ask that this Company furnish you a statement of the value of the Norfolk Southern Railroad property investment filed with the Interstate Commerce Commission for the purpose of aiding the Interstate Commerce Commission in fixing its rate basis so as to arrive at a 6% return under the Transportation Act of 1920.

I beg leave to advise that this Company has not filed any statement with the Interstate Commerce Commission other than its annual and monthly reports. The book value or property investment account of Norfolk Southern Railroad Company appears in its report as filed with the Interstate Commerce Commission and with the Corporation Commission of North Carolina.

Yours truly,

M. S. HAWKINS,
Asst. to President and Secretary.

EXHIBIT D.

Raleigh, N. C., May 31, 1920.

M. S. Hawkins,
Asst. to President Norfolk and Southern R. R.,
Norfolk, Va.

Referring to our request for the property investment used by your company in your petition before the Interstate Commerce Commission for increase in freight rates under the Transportation Act. Please let us have these figures by wire if possible and oblige,

J. S. GRIFFIN.

Norfolk, Va., June 1, 1920.

J. S. Griffin,
Clerk North Carolina Corporation Commission,
Raleigh, N. C.

Yours. Report to Interstate Commerce Commission property investment to December thirty-first, $31,484,868.

M. S. HAWKINS.

120 *Order for Filing Affidavit of Members of Former Tax Commission.*

Filed April 6, 1922.

In the District of the United States for the Eastern District of North Carolina.

NORFOLK & SOUTHERN RAILROAD COMPANY.

vs.

A. D. WATTS and Others.

In this cause it is agreed by counsel and so ordered by the Court that the affidavit of the members of the former Tax Commission of North Carolina filed in the case of the Southern Railway Company against A. D. Watts and others shall be filed and considered as a part of the evidence in the case, that is to say, the Atlantic Coast Line

Railroad Company, Seaboard Air Line Railway Company, Norfolk & Southern Railroad Company and Atlantic & Yadkin Railway Company.

H. G. CONNOR,
U. S. District Judge.

121 *Affidavit of Members of Former Tax Commission of North Carolina.*

Jan. 24, 1922.

In the District Court of the United States for the Western District of North Carolina.

SOUTHERN RAILWAY COMPANY

vs.

A. D. WATTS and A. D. WATTS as Commissioner of Revenue. et als.

And the other suits against the same defendants, brought by Atlantic Coast Line Railroad Company, Sea Board Air Line Railway Company, Norfolk & Southern Railroad Company, Atlantic & Yadkin Railway Company.

Affidavit by the Members of the Former Tax Commission of North Carolina.

122 STATE OF NORTH CAROLINA,
Wake County:

W. T. Lee, George P. Pell and A. J. Maxwell make this statement under oath.

That in the years 1919 and 1920 W. T. Lee, George P. Pell and A. J. Maxwell were members of and constituted the State Tax Commission, W. T. Lee being Chairman of the State Tax Commission, and had and exercised the duties and responsibilities conferred upon them by Chapter 92 of the Public Laws of 1919 and by Chapter 84 of the Public laws of 1919, and as the State Tax Commission exercised the powers and duties of a Board of Appraisers of all properties, located within the State of North Carolina, of all railroad companies (excepting certain incidental properties of such companies assessed by local authorities) and also had and exercised supervision of the valuation of all real property of every kind and of the listing and valuation of all personal property of every kind in all counties of the State. In the supervision of the listing and valuation of such properties by local assessing officers, under the laws hereinbefore referred to, it was the purpose to have all lands listed and valued equally at the true value of such lands and assessing officers were required to ascertain the actual sales value of lands, where there had been a recent sale, and to use the information thus obtained, as well as all other information obtainable, in finding the actual true value of such lands on the first day of May, 1919, and in estimating the

value of other similar lands, in cases where there had been no recent sales, and that as to industrial plants of all kinds and the tracks, structures, buildings and equipment of railroad companies—properties which had not been subject to unit sales as a whole and the value of which could not, therefore, be determined with relation to an actual sale of such properties—it was the purpose to require, and the State Tax Commission did in so far as it could reasonably do so, the owners of industrial plants and railroad companies, to furnish information on forms prepared by experienced persons employed by
123 the State Tax Commission, complete detailed information, under authority of section thirty-one of Chapter 84 of the Public Laws of 1919, of the cost of reproduction of such industrial plants on the price level of May 1, 1919, and as to railroads the cost of reproduction of the properties of such companies new (on May 1, 1919) including side tracks, doubled tracks, and all properties owned by such companies in this State, less reasonable depreciation for such of its properties as had depreciated in value, and also information as to capital stock, bonds and other indebtedness, earnings, and so on.

The Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railway Company and the Norfolk Southern Railroad Company, in response to demands made upon them for specific and detailed information as to the cost of reproduction of the properties in this State of each of these companies, did file with the State Tax Commission certain sets of figures, now on file with the Commissioner of Revenue, but did not pretend that such figures even approximated the cost of reproduction of the properties owned by these companies, or either of them, in this State, in the year 1919, but, on the other hand, insisted that it would not be possible for them to furnish this information at any reasonable cost or at any cost within a period of several years. The State Tax Commission, therefore, did not have the benefit of this specific detailed information with respect to the value of the particular properties in this State of these several railroad companies which it did have with respect to, and used in, the valuation of properties of industrial enterprises within the State, and of necessity had to form its valuation of the properties of these companies without having this information and by making the best use that it could of other information furnished by these companies and information on file with and in the records of the North Carolina Corporation Commission.

One of the evidences of value submitted for consideration by each of these companies was what is technically known as "in-
124 vestment accounts" of these companies, not within the State of North Carolina, but throughout the entire systems of railroads owned by them in many states other than North Carolina; that it was insisted by them that the proportion of their total investment account which their main line mileage within the State of North Carolina bore to the total main line mileage of each of these several railway systems throughout the several states in which they operated would give a fair value of the property of such companies within the State of North Carolina, except that it was insisted that they had

larger and more expensive terminal facilities outside the State of North Carolina than they had at any one point within the State of North Carolina, and that for this reason the straight mileage proportion of their investment account would be more than a fair proportion for this State.

The State Tax Commission was not able to agree with them that this method would fairly determine the value of their properties within the State of North Carolina, for that, first, their investment accounts represented investments made in the properties going back through a long period of years to their original organizations, and such investment having been in a large part made in years when the general price level of materials, commodities and labor was very much lower than the price level for materials, commodities and labor was on May first, 1919; and for that, second, a straight mileage proportion of their lines did not, in our opinions, accurately or fairly represent the actual value of the properties of either the Southern Railway Company, the Atlantic Coast Line Railroad Company or the Seaboard Air Line Railway Company within the State of North Carolina, the lines of these companies within North Carolina having, in our opinion, a much greater value than an average based upon the mileage for their entire systems, in that they have a larger proportion of double track main line mileage in North Carolina than for their entire systems, and in that both the gross and net earnings of each of these railway lines within the State of North Carolina is much greater than the average gross and net earn-
125 ings per mile for their entire systems. All of this was duly considered by the Commission in proportioning, dividing and determining the valuation of the property of the said railroads in North Carolina as provided by law.

For the year 1918, the last calendar year prior to the first day of May, 1919, the excess net operating revenue per mile within the State of North Carolina of each of these railway companies in excess of the net operating revenue per mile for their entire systems, stated in percentages as shown by their reports on file with the Corporation Commission, was as follows:

Southern Railway Company	50.48
Atlantic Coast Line Railroad Company	19.75
Seaboard Air Line Railway Company	250.01

A satisfactory estimate of value could not be made based upon the market value of the stocks and bonds of these companies on the first day of May, 1919, for the reason that the limited market and the limited number of shares and bonds sold on the market did not furnish, in our judgment, a fair index of the actual value of these properties as a whole, and more particularly did not furnish an index of the actual value of the properties of these companies located within the State of North Carolina for the reasons hereinbefore stated; nor was it considered that the actual value of these properties could be fairly determined by their earnings, until there should

be a fair return to normal conditions of operating costs, flow of traffic and stablization of transportation rates.

For the reasons hereinabove set out, the valuation finally made or determined by the State Tax Commission of the properties of each of these railway companies within the State of North Carolina as of the first day of May, 1919, was not made with the sole and exclusive relation to any one element or indicia of value, but after due and proper consideration of all of them and upon the best knowl-
126 edge and information obtainable by the Commission.

The members of the Commission have for years been actively engaged in the matters of valuation for rate making and taxation purposes in North Carolina and are acquainted with property values of railroads in the State and in assessing the properties of the plaintiffs the Commission gave due consideration to all factors and methods prescribed by the law governing such valuations and the values of said properties as fixed and determined by the Commission as of the first day of May, 1919, were, in the opinion of affiants, fair, just and reasonable.

As to the properties of the Southern Railway Company in the State of North Carolina, a valuation of $111,308,325 was made, which was in fact the proportion of the investment account of the Southern Railway Company which the gross earnings of that company within the State of North Carolina bore to the total gross earnings of the Southern Railway Company for the entire system. Upon hearing and review of this valuation, after notice to the Southern Railway Company, it was reduced to $101,960,416, which was in fact the amount which the average net earnings of the Southern Railway Company within the State of North Carolina for the preceding five years, capitalized upon a basis or theory of six per cent, would have produced.

In general, the same method was followed in fixing the valuation of the total properties in the State of the Atlantic Coast Line Railroad Company, and the Seaboard Air Line Railroad Company, and the Norfolk and Southern Railroad Company. In each case the basis consideration was the cost of reproduction value less depreciation, which, in the absence of correct reports of such values by the railroads as they are required by law to furnish and which were duly called for by the Commission, was arrived at accurately as possible by a consideration of the investment account. In each case a tentative cost of the reproduction value was found in this way which, except in the case of the Norfolk Southern, was in excess of the assessment as finally arrived at. In the case of the Norfolk and Southern this investment account, or cost of reproduction, value was the same as the final assessment and that railroad made
127 no application to the Commission for rehearing on that assessment and took no exception thereto. In the case of the other railroads, a consideration of capitalization of new income and of the other factors which the Tax Commission was authorized by law to consider led to the reduction of this investment account, or

cost of reproduction, value to the valuation fixed as the final assessment.

After the assessments of the properties of the plaintiffs had been arrived at by the Tax Commission pursuant to the Revaluation Act (Public Laws of 1919, Chapter 84) the Commission, as required by law, made report of its action and valuation to the general assembly of North Carolina and thereupon, in the special session of 1920 the General Assembly, by Chap. 1, Public Laws, Extra Session 1920, specifically approved said valuations as correct and adopted them as and declared them to be the basis for taxation for the years 1920-1923, inclusive, except as such valuations should be thereafter changed according to law. And the affiants are informed and believe and so aver that the said valuations, so made by the Commissions and reported to the General Assembly and approved and adopted by it, have remained and still are the basis for taxation of the said railroads in North Carolina except in so far as they have been modified or changed by the Commissioner of Revenue upon application made by him by the said railroads for review as provided by law.

As to the tentative values of the engineers of the Interstate Commerce Commission, referred to by the plaintiffs in these suits as being proper indices of the correct valuation of their total properties in North Carolina, the said tentative values were arrived at upon the basis of an inventory of the railroads' properties as of the date of June 30th, 1914. The affiants state of their own knowledge that the said prices prevailing in 1914 as to material, labor, and all costs of railroad construction, were abnormally low, that since that time such prices have greatly increased, and that in 1919 and in 1920 the safe prices of labor, materials and all things going into the construction of railroads were very much higher than those of 1914 upon which the said tentative figures of the Interstate Commerce Commis-
128 sion were based. In the opinion of the affiants the said tentative figures in no way furnish a proper index or test of the value of the properties of railroads in North Carolina in 1919 and 1920.

It was the purpose of the State Tax Commission in valuing the property of transportation companies and other companies exercising the right of eminent domain, and in the supervision of the valuation of all other property by local assessing officers, to carry out and to have carried out what the State Tax Commission understood to be the general purpose of Chapter 84 of the Public Laws of 1919—that all property of every class should be fairly and equally valued at its actual value, and in evidence that no injustice was done to the Southern Railway Company, the Atlantic Coast Line Railroad Company, the Seaboard Air Line Railroad Company and the Norfolk Southern Railroad Company—there is attached hereto a copy of the report of the State Tax Commission to the Special Session of the General Assembly of 1920, showing by comparison, the valuation of 1920 compared with the former valuation of each of the several different classes of properties within the State of North Carolina

and showing that the increase in valuation of all railroad property within the State of North Carolina was 99 per cent; of real property 296 per cent; and of all property of all classes within the State 194 per cent.

W. T. LEE.
A. J. MAXWELL.
GEO. P. PELL.

Sworn to and subscribed before me this January 21, 1922.
W. H. PITTMAN,
Notary Public.

My commission expires July 29, 1922.

129 *Opinion of the Court.*

Filed Mar. 21, 1922.

In the District Court of the United States.

In Equity.

SOUTHERN RAILROAD COMPANY, ATLANTIC AND YADKIN RAILWAY Company, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Norfolk Southern Railroad Company,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, and Others.

Before Waddill, Circuit Judge, Boyd and Connor, District Judges.

Per Curiam:

Bills were filed in equity by the above named Companies, to-wit: The Southern Railroad Company and the Atlantic and Yadkin Railway Company in the United States District Court for the Western District of North Carolina and the Atlantic Coast Line Railway Company and the Norfolk Southern Railroad Company, in the Eastern District of North Carolina, against the defendants A. D. Watts and A. D. Watts, as Commissioner of Revenue, Baxter Durham, Auditor, Benjamin R. Lacy, Treasurer, and James S. Manning, Attorney General of North Carolina, in which, for the causes therein set forth, they and each of them, prayed for an Interlocutory Injunction restraining and enjoining said defendants, in their individual and official capacity, from proceeding with the collection and the enforcement of payment against complainants, of certain taxes assessed, or about to be assessed, against complainants and their property, until the final hearing of said causes for that, among other things alleged in the bills, the statutes of the State of North Carolina under and pursuant to which, said taxes were assessed and sought to be enforced, were unconstitutional and void. Pursuant to the provisions of Sec-

tion 266 of the Judicial Code, James E. Boyd, Judge of the
130 Western District, called to his assistance in hearing said motions for Interlocutory Injunction in said causes, brought in the Western District, Edmund Waddill, Jr., Circuit Judge of the Fourth Circuit, and H. G. Connor, Judge of the District Court of the Eastern District of North Carolina, and H. G. Connor, Judge of the Eastern District, called to his assistance, in hearing said motions, brought in the Eastern District, Edmund Waddill, Jr., Circuit Judge of the Fourth Circuit, and James E. Boyd, Judge of the District Court of the Western District of North Carolina.

As required by the provisions of the statute, the said District Judge in the causes pending in said District, made orders in which they directed the defendants to show cause, at a time and place therein named, why the Interlocutory Injunctions should not be granted as prayed for.

The motions in said causes were, by consent of complainants and defendants, by their attorneys, heard together, at Greensboro, North Carolina, on January 24th, 1922, when and where said Judges being present, said motions were heard upon the bills, answers, affidavits, exhibits and argument of counsel, for all parties in said causes.

The further consideration of the motions was by consent of counsel, and order of the Court, continued to Raleigh, North Carolina on March 16th, 1922, when and where said Judges, being present, proceeded to consider said motions upon the pleadings, affidavits, exhibits and briefs filed by counsel.

It appears from the bills and answers that the said motions, and prayer for final relief of complainants, are based upon the following allegations and contentions:

(1)

That the property of complainants was not assessed in the same manner and by the same method as the property of the individual citizens of the State and that, the manner and methods by which complanaints' property is appraised and assessed for taxation, operates as an unjust and unlawful discrimination against complain-
131 ants, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and that, thereby, complainants are deprived of their property without due process of law.

(2)

That the appraisal and assessment for taxation of the property of complainants are not made in accordance with the provisions of the Constitution and Statutes of the State of North Carolina and that said appraisal and assessment of taxes thereon are invalid.

(3)

That the appraisal of the value of complainants' property is in excess of its true value, for the purpose of taxation, as provided by the Constitution of North Carolina and is, therefore, invalid.

(4)

That the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States in the appraisal and assessment of complainants' property, are violated in that complainants' property, alleged by the State to be assessed at its true value for taxation, the property of other tax payers in the State, is appraised and assessed for taxation at less than its true value.

That the Franchise or Privilege Tax imposed upon complainants is invalid for that:

(1)

The ad valorem assessment is in excess of its true value for taxation and that the Franchise or Privilege Tax, based thereon, in accordance with the Statutes of the State, violates the Constitution of the United States and the State of North Carolina.

(2)

The Franchise or Privilege Tax is, in truth and fact an ad valorem tax and invalid, because not imposed upon the property of other citizens of the State.

(3)

That the statute of North Carolina under, and pursuant to
132 which the Franchise or Privilege Tax is imposed and sought to be enforced imposes a tax upon the privilege of doing business by complainants, both interstate and intrastate and is, therefore, a burden upon interstate commerce and thereby violates the Commerce Clause of the Constitution of the United States.

(4)

That, if the Franchise or Privilege Tax, imposed upon complainants be valid, the method of ascertaining the value of complainants' property as a basis for fixing the amount of said Franchise or Privilege Tax includes property of complainants used, as well in interstate as intrastate commerce, and violates the Commerce Clause of the Constitution of the United States.

The Court, after consideration of the bills, exhibits, affidavits and argument of counsel, is of the opinion that, for the purpose of this motion only, complainants have neither in their pleadings nor upon

the proofs adduced, made such a case as entitled them to have an Interlocutory Injunction in said causes as prayed for and the motions for such Interlocutory Injunctions in respect to the ad valorem and the Franchise and Privilege Tax should not be granted and said motions and each of them are denied.

The Court is of the opinion that the contentions sought to be made by complainants in regard to the imposition and enforcement of the Income Tax against complainants, as provided by the Constitution of North Carolina, Article V, Section 3, as amended, and the statutes enacted by the Legislature, pursuant thereto and for the enforcement thereof are not presented upon the bills and proofs herein.

The Court, therefore, does not pass upon, or express any opinion in respect to the validity of the Income Tax, or the statutes enacted for its enforcement. Complainants may, in respect to such Income Tax, proceed without prejudice in such manner as they may be advised.

Let this opinion, and a copy thereof, be filed and an order drawn and signed to be filed in the record in each of said causes in
133 accordance therewith.

The further proceedings in said causes, in the Courts of the District, in which they are pending, will be had as provided by the Judicial Code and the course and practice of said Courts. The costs of the motion will abide the final decrees in said causes.

At Raleigh, North Carolina, this the 18th day of March, 1922.

EDMUND WADDILL, JR.,
United States Circuit Judge
Fourth Judicial Circuit.

JAMES E. BOYD,
United States District Judge,
Western District of North Carolina.

H. G. CONNOR,
United States District Judge,
Eastern District of North Carolina.

134 *Order Denying Interlocutory Injunction.*

Filed Mar. 18, 1922.

In the United States District Court for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY, Complainant,

vs.

AUGUSTUS D. WATTS, Commissioner of Revenue, and Others, Defendants.

This cause came on this 18th day of March, 1922, before the United States District Court for the Eastern District of North Caro-

lina, held by the undersigned three United States judges sitting pursuant to the provisions of Section 266 of the Judicial Code, to be heard upon a motion for an interlocutory injunction to enjoin and restrain the State of North Carolina from collecting certain taxes enumerated in the complainant's bill, which motion was heard and considered upon the pleadings and the affidavits filed respectively by the complainant and the defendants, and was argued by counsel. Thereupon the court composed of the three judges sitting as aforesaid, having filed an opinion denying the right of the complainant to have an interlocutory injunction it is, for reasons stated in writing in said opinion filed in this cause, and pursuant thereto, adjudged, ordered and decreed that said injunction so prayed for, be and the same is hereby refused and denied. And it is further ordered that the defendants shall not proceed to enforce the collection of taxes involved in this litigation, for the period of thirty days from the date of this order, to the end that the complainant may take such action in the premises as it is advised to.

(S.) EDMUND WADDILL, JR.,
United States Circuit Judge,
Fourth Judicial Circuit.

(S.) JAS. E. BOYD,
United States District Judge,
Western District of N. C.

(S.) H. G. CONNOR,
United States District Judge,
Eastern District of N. C.

135 *Notice of Application for Appeal and Stay.*

Filed Mar. 30, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

To the defendants in the above entitled action and Honorable James S. Manning, Attorney General of North Carolina, and Frank Nash, Assistant Attorney General, Solicitors for defendants:

You will please take notice that on Thursday, March 30th, 1922, at 10:00 o'clock A. M., or as soon thereafter as counsel may be heard, the above named complainant will apply to His Honor, Henry G. Connor, District Judge, at office in Wilson, N. C., for an order allow-

ing the complainant to appeal to the Supreme Court of the United States and granting a stay of proceedings until the appeal shall have been heard, passed upon and disposed of by the Supreme Court of the United States.

NORFOLK SOUTHERN RAILROAD COMPANY,
(S.) By W. B. RODMAN,
Solicitor.

Filed at Wilson, N. C., March 30th, 1922.
(S.) H. G. CONNOR,
District Judge.

136 *Order Fixing Time for Hearing Application.*

Filed Mar. 31, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, and Others.

Order.

The plaintiff in the above entitled cause having presented its application for appeal to the Supreme Court from an order of Circuit Judge Waddill, and District Judges Boyd and Connor, dated March 18, 1922, and its application for a stay pending the decision of the Supreme Court upon appeal and counsel for defendants having requested of the Court a continuance,

It is now ordered that this application be continued to be heard before me at Wilson, North Carolina, at Chambers, at 11 o'clock A. M., April 8th, 1922.

That copies of this order be mailed to the Attorney General and his associate counsel.

This the 30th day of March, 1922, at Wilson, North Carolina.

H. G. CONNOR,
U. S. District Judge.

137 *Assignment of Errors.*

Filed Apr. 15, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS, Individually and as Commissioner of Revenue of North Carolina, et als., Defendants.

Assignment of Errors.

Now comes the complainant in the above entitled cause and in connection with its petition for appeal from the order entered in this cause March 18, 1922, (by the Court convened under section 266 of the Judicial Code of the United States), denying the motion for an interlocutory injunction, pendente lite, files the following assignment of errors:

The Court erred:

(1) In decreeing that the interlocutory injunction be denied.

(2) In holding that for the purpose of the motion for an interlocutory injunction only, complainant neither in its pleadings, nor upon the proof adduced, is entitled to have the interlocutory injunction applied for.

(3) In failing to hold that the assessment of complainant's property for taxation is in excess of its "true value" in money for the purpose of taxation as required by the Constitution of North Carolina and is therefore invalid.

138 (4) In failing to hold, that the appraisal and assessment of Complainant's property for taxation was not made in accordance with the provisions and directions of the Constitution and Statutes of the State, and is illegal and void.

(5) In failing to hold that the property of complainant was illegally assessed, in that the plan of valuation followed to arrive at the assessment complained of imported into the State of North Carolina values which are elsewhere, and that such plan so followed violates the Commerce Clause of the Constitution of the United States.

(6) In failing to hold that the manner and method by which complainant's property was assessed is illegal and operates as an unjust and unlawful discrimination against complainant in violation

of the provisions of the Fourteenth Amendment to the Constitution of the United States, and that thereby complainant is deprived of its property without due process of law and denied the equal protection of the law.

(7) In failing to hold that the action of the Commissioner of Revenue, in declining to make a reduction in the value of complainant's property commensurate with the horizontal reductions made by the taxing authorities under the North Carolina law permitting such reductions on other property generally, was unjust discrimination, contrary to the Uniformity Clause of the Constitution of North Carolina and the Fourteenth Amendment to the Constitution of the United States.

139 (8) In failing to hold that the Uniformity Clause of the Constitution of North Carolina, and the Fourteenth Amendment to the Constitution of the United States, in the appraisal and assessment of Complainant's property are violated, in that Complainant's property is, as alleged by the State, assessed at its true value for taxation, while the property of the other taxpayers in the State is appraised and assessed for taxation at less than its true value.

(9) In failing to hold that the property of Complainant was not assessed for taxation in the same manner and by the same method as the property of other taxpayers, and that the manner and methods by which complainant's property is appraised and assessed for taxation operates as an unjust and unlawful discrimination against complainant, in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States and of the provisions of Article V, Section 3 of the Constitution of the State, and is therefore illegal and void.

(10) In failing to hold that the ad valorem assessment being in excess of true value for taxation, the so-called Franchise Tax based thereon violates the Constitution of North Carolina and the Constitution of the United States.

(11) In failing to hold that the so-called Franchise or Privilege tax is in truth and in fact an additional ad valorem or property tax upon complainant's property and is illegal and invalid because levied for the support of the State and is not levied equally upon the property of other citizens and taxpayers of the State and the en-
140 forcement of such void statute deprives complainant of its property without due process of law contrary to the Constitution of the United States.

(12) In failing to hold that the so-called Franchise or Privilege tax is under the statute imposed as a license or privilege tax for the privilege of engaging in inter and intrastate commerce and is therefore a burden upon interstate commerce in violation of the Commerce Clause of the Constitution of the United States.

(13) In failing to hold that the privilege or license tax imposed upon complainant under Section 32 of the Revenue Laws of the State

of North Carolina (Chapter 34 Public Laws, 1921) is a license tax, imposed upon complainant, for the privilege of engaging in and carrying on the business of a common carrier of interstate commerce by railroad, and as such was a regulation of and burden upon interstate commerce, and as such illegal and void, being in conflict with the Commerce Clause of the Constitution of the United States.

(14) In failing to hold that section 32 (3½) of the Revenue Laws of the State of North Carolina, applied to Railroad Companies, and denied to complainant the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, and violated the Uniformity Clause of the Constitution of the State (Article V, Sect. 3), and that the franchise tax levied under Section 32 is illegal and void.

141 (15) In failing to hold that the payment of the so-called Franchise or Privilege tax is exacted as a condition precedent to the right of complainant to do "any business" in the State, whether interstate or intrastate, and, therefore, unconstitutional and void.

(16) In failing to hold that the assessment made is void, in that it includes in the value used as a basis for arrival at the franchise or privilege tax the value of property not used in the business for which the privilege is exacted, and such law and the enforcement thereof, in the manner set forth, violates the Fourteenth Amendment to the Constitution of the United States.

(17) In holding that complainant in its pleadings did not state a cause of action as to the Franchise Tax, which if supported by proof, entitled complainant to have an interlocutory injunction against the collection thereof, as prayed.

(18) In holding that complainant did not, upon the hearing of the motion, adduce such proof as to the Franchise or Privilege Tax as entitled complainant to an injunction as prayed for.

(19) In failing to hold that the franchise or privilege tax imposed upon complainant under section 32 (6½) of the Revenue Laws of the State of North Carolina, (Chapter 34, Public Laws, 1921), while called a franchise tax for the privilege of doing business in the State, is in truth and fact a tax upon property, levied in violation of Article V of the Constitution of the State, and is illegal and void.

(20) In failing to hold that complainant in its pleadings
142 stated a cause of action, as to the manner, method and amount of the assessment, and appraisal of complainant's property for taxation, which if true, entitled complainant to have an interlocutory injunction as prayed for.

W. B. RODMAN,
Solicitor for Complainant.

Of Counsel:
JOHN M. ROBINSON.
W. B. RODMAN, JR.
C. M. BAIN.

Filed at Wilson, N. C., March 30, 1922. H. G. Connor, U. S. Dist. Judge.

143 *Order Denying Stay.*

Filed Apr. 18, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY, Plaintiff,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This matter coming on to be heard at Raleigh, North Carolina, on April 15, 1922, on application of plaintiff for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18, 1922, until the appeal heretofore taken shall have been heard, passed upon, and disposed of by the Supreme Court of the United States, and all parties being represented by counsel now before the Court:

The Court, being of the opinion that the application to continue in effect the thirty day stay granted March 18, 1922, until a review and decision can be had by the Supreme Court of the United States on the appeal heretofore taken from the order of this Court, denying the interlocutory injunction, should be presented to the Supreme Court of the United States, denies the application for continuance of said stay until the appeal is decided by the Supreme Court of the United States.

And it apparing to the Court that the hearing of this application has been delayed through no fault of plaintiff's, and the Court being of the opinion that the status quo should be continued until the application for restraint pending the appeal can be made to and decided by the Supreme Court of the United States, Orders that the defendants shall not proceed to enforce the collection of taxes involved in this litigation for the period of thirty days from the date of this order.

EDMUND WADDILL, JR.,
U. S. Circuit Judge, Fourth Judicial Circuit.
JAS. E. BOYD,
U. S. District Judge, Western District of North Carolina.
H. G. CONNOR,
U. S. District Judge, Eastern District of North Carolina.

144 *Stipulation of Counsel as to Record.*

Filed Apr. 15, 1922.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

It is stipulated and agreed by and between the parties to the above entitled cause:

That the Clerk, in making up the transcript of record on this appeal from the Order denying complainant's motion for an interlocutory injunction, shall include all pleadings, orders, motions, stipulations, affidavits, and exhibits, constituting the entire record before the Court, except there may be omitted from the record the following:

(1) The Clerk shall not include as a part of the transcript the individual affidavits of the Registers of Deeds of the 100 Counties in the State of North Carolina, together with the tabulated lists of conveyance recorded from January 1, 1921, to June 30, 1921, and setting forth opposite each conveyance the consideration in the deed and the assessed value for taxation of the property conveyed.

(2) Return of the service of the notice of the hearing on complainant's application for an interlocutory injunction.

(3) Return of the service of the writ upon the various defendants.

The Clerk shall include as a part of the transcript one of the said affidavits, to-wit, that of C. M. Weeks, of Beaufort County, North Carolina, together with the tabulated statement of deeds re-
145 corded and the deed value of each parcel conveyed and the assessed value for taxation of each parcel so conveyed, these being typical of all as to the form and character of information contained therein. It is unnecessary to set forth the individual affidavits of deed and tax value taken from the records of each separate County in the State, because the information shown on said separate affidavits, containing the deed value of 7,431 separate conveyances and a comparison of the tax assessment of each said parcel, is cummarized in the affidavit of C. J. O'Brien which is to be included in the transcript.

It is further stipulated that the Clerk may use in preparing the record on appeal printed copies of all such pleadings, documents, affidavits, etc., as may be furnished by the parties hereto.

W. B. RODMAN,
Solicitor for Complainant.
JAMES L. MANNING,
Solicitor for Defendants,
Attorney General of N. C.

146 *Additional Stipulation as to the Record.*

Filed Apr. 22, 1922.

In the United States District Court, Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et als.

Agreement of Counsel.

In this cause it is agreed that the following papers need not be included in the transcript of record for United States Supreme Court.

Subpœna duces tecum for A. D. Watts;
Subpœna duces tecum for W. T. Lee and R. O. Self;
Motion of complainant for bill of particulars;
Interrogatories of complainant;
Defendants' objections to interrogatories;
Order sustaining defendants' objections;
Order denying motion to make answer definite.

(S.) JAMES S. MANNING,
Solicitor for Defendants and Attorney General of North Carolina.
(S.) JOHN M. ROBINSON,
Solicitor for Complainant.

147 *Memorandum of Original Papers Certified Separately.*

Petition for Appeal filed April 15, 1922.
Appeal allowed Apr. 15, 1922.
Appeal Bond dated April 17, 1922; penalty $1,000.00; Obligors:

Norfolk Southern Railroad Company and United States Fidelity & Guaranty Company: Conditioned for damages and cost.

Citation dated April 15, 1922; service accepted April 15, 1922, by James S. Manning, Attorney General of North Carolina, for A. D. Watts, Commissioner of Revenue, and other defendants.

148 *Order to Transmit Record.*

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et als.

Order to Transmit Record.

And thereupon it is ordered by the Court here that a transcript of the record and proceedings in said suit be transmitted to the *to the* United States Supreme Court at Washington, D. C., and the same is transmitted accordingly.

S. A. ASHE,
Clerk United States District Court.

149 *Clerk's Certificate.*

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY

vs.

A. D. WATTS, Commissioner of Revenue, et als.

Clerk's Certificate.

I, S. A. Ashe, Clerk, United States District Court, for the Eastern District of North Carolina, do hereby certify that the foregoing pages present a full, true and correct copy of the proceedings had and orders entered in that certain suit in equity pending in said Court,

wherein Norfolk Southern Railroad Company is complainant and A. D. Watts, Commissioner of Revenue of North Carolina, and others are defendants.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said District Court at the Courthouse in Raleigh. State of North Carolina, this 5 day of May, 1922.

[Seal of United States District Court, Eastern District of N. C., at Raleigh.]

S. A. ASHE,
Clerk United States District Court.

150 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY, Complainant,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

To the Honorable H. G. Connor, District Judge of the United States for the Eastern District of North Carolina:

The Norfolk Southern Railroad Company, the above named Complainant, feeling aggrieved by the Order of the Court, (consisting of Circuit Judge Waddill and District Judges Boyd and Connor, convened under Section 266 of the Judicial Code of the United States), entered in the above entitled cause on the 18th day of March, 1922, refusing and denying the interlocutory injunction applied for in this cause to restrain the defendants, until the cause could be heard on its merits, does, as provided in Section 266 of the Judicial Code of the United States, hereby appeal to the Supreme Court of the United States from the Order refusing and denying the interlocutory injunction applied for upon the grounds set forth in the assignments of error filed herewith, and Complainant prays that its appeal be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings, and documents upon which said appeal is based, duly authenticated, be sent to the Supreme Court of the United States, under the rules of such Court in such cases made and provided.

And Complainant further prays that an order be entered continuing in effect the thirty day stay granted by said Court in its Order entered March 18, 1922, until the appeal herein prayed for shall have

been heard, passed upon, and disposed of by the Supreme Court of the United States.

NORFOLK SOUTHERN RAILROAD COMPANY,
By W. B. RODMAN,
Solicitor.

Of Counsel:
JOHN M. ROBINSON.
W. B. RODMAN, JR.
C. M. BAIN.

151 [Endorsed:] No. 439 Eq. Norfolk Southern Railroad Company vs. A. D. Watts and Others. Petition for Appeal. I certify that the within is entered and filed this day. Apr. 15, 1922. S. A. Ashe, Clerk.

152 In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. 439.

NORFOLK SOUTHERN RAILROAD COMPANY, Plaintiff,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

This matter coming on to be heard on the application of plaintiff for an appeal to the Supreme Court of the United States, under Section 266 of the Judicial Code of the United States, from the decree entered in this cause on the 18th day of March, 1922, refusing and denying the interlocutory injunction applied for; and upon the assignment of errors filed in said cause and presented to the Court with the said application for appeal and for an order continuing in effect the thirty day stay granted by the Court in this case in its order entered March 18th, 1922, until the appeal prayed for shall have been heard, passed upon, and disposed of by the Supreme Court of the United States;

And all parties being represented by counsel now before the Court on due notice.

It is ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the order and decree filed and entered herein on the 18th day of March, 1922, refusing and denying the interlocutory injunction prayed for, upon the giving of bond in the sum of $1,000.00.

It is further ordered that citation of appeal issue and be served upon the defendants or their attorneys of record, and that the Clerk of this Court prepare and forward to the Supreme Court of the

United States a transcript of the record of the proceedings, pleadings, affidavits, etc., upon which the judgment herein was rendered, duly authenticated.

This 15th day of April, 1922.

H. G. CONNOR,
U. S. District Judge, Eastern District of North Carolina.

152½ [Endorsed:] #439 Eq. Norfolk Southern R. R. Co. vs. A. D. Watts. Order Granting Appeal. I certify that the within is entered and filed this day. Apr. 15, 1922. S. A. Ashe, Clerk.

153 *Appeal Bond.*

Filed 22 day of April, 1922. S. A. Ashe, Clerk.

In the District Court of the United States for the Eastern District of North Carolina.

In Equity.

No. —.

NORFOLK SOUTHERN RAILROAD COMPANY, Plaintiff,

vs.

A. D. WATTS and A. D. WATTS, as Commissioner of Revenue, et al., Defendants.

Know all men by these presents: That we, Norfolk Southern Railroad Company, a corporation organized and existing under the laws of the State of Virginia, as principal, and United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto the above named A. D. Watts and the other defendants in the sum of One Thousand Dollars, to be paid to the said A. D. Watts and other defendants, their successors and assigns, to which payment, well and truly to be made, we bind ourselves and our successors jointly and severally by these presents.

Sealed with our seals this 17th day of April, 1922.

Whereas, in a suit pending in the District Court of the United States for the Eastern District of North Carolina between Norfolk Southern Railroad Company, plaintiff, and A. D. Watts, et al., defendants, a decree was rendered by the Court consisting of Circuit Judge Waddill and District Judges Connor and Boyd, convened under Section 266 of the Judicial Code, denying plaintiff an interlocutory injunction as prayed for, and the said Norfolk Southern Railroad Company having prayed and been allowed an appeal under Section 266 of the Judicial Code of the United States direct to the Supreme Court of the United States, and filed a copy thereof in the Clerk's office of the said Court, and citation having issued directed to the said A. D. Watts, et al., citing and admonishing them

to be and appear in the Supreme Court of the United States within the time required by law.

Now, the condition of the above obligation is such, that if the said Norfolk Southern Railroad Company, shall prosecute its said appeal to effect, and answer all damages and costs if it fails to make
154 its appeal good, then the above obligation shall be void, else to remain in full force and effect.

NORFOLK SOUTHERN RAILROAD COMPANY,
By W. B. RODMAN,
Attorney.

[Seal of United States Fidelity & Guaranty Company.]

UNITED STATES FIDELITY & GUARANTY COMPANY,
By MARGARET W. WALKER,
Atty.-in-Fact.

Approved this 18th day of April, 1922.

H. G. CONNOR,
United States District Judge.

155 [Endorsed:] #439. Eq. Norfolk Southern Railroad Co. vs. A. D. Watts et —. Appeal Bond. I certify that the within is entered and filed this day, Apr. 22, 1922. S. A. Ashe, Clerk.

156 *Citation.*

Filed 15th Day of April, 1922, S. A. Ashe, Clerk.

UNITED STATES OF AMERICA:

The President of the United States to A. D. Watts and A. D. Watts as Commissioner of Revenue, et al., Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be holden in the City of Washington, on the 8th day of May, next, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of North Carolina, wherein Norfolk-Southern Railroad Company is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said appeal mentioned, should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand in the City of Raleigh, N. C., in the District above named, this 15th day of April, 1922.

H. G. CONNOR,
Judge of the District Court of the United States for the Eastern District of North Carolina.

Service of within citation accepted for all defendants April 15, 1922.

A. D. WATTS,
Commissioner of Revenue, and other defendants.
By JAMES I. MANNING,
Attorney General of North Carolina.

I certify that the within is entered and filed this day, Apr. 15, 1922.

S. A. ASHE,
Clerk.

Endorsed on cover: File No. 28,917. E. North Carolina D. C. U. S. Term No. 962. Norfolk Southern Railroad Company, Appellant, vs. A. D. Watts and A. D. Watts as Commissioner of Revenue of the State of North Carolina. Filed May 8th, 1922. File No. 28,917.

(6548)